TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 894.

THE UNITED STATES, APPELLANT,

vs.

THE JOINT TRAFFIC ASSOCIATION ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED MARCH 30, 1897.

(16,544.)

(16,544.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 765.

THE UNITED STATES, APPELLANT,

vs.

THE JOINT TRAFFIC ASSOCIATION ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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Circuit Court of the United States

1

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES OF AMERICA,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

2

3

4 *To the Honorable the Judges of the Circuit Court of the United States, in and for the Southern District of New York:*

The United States of America, by Wallace Macfarlane, their attorney for the Southern District of New York, acting in this behalf under the direction of the Attorney General of the United States, on information and belief, complain and say:

That the New York Central & Hudson River Railroad Company is a corporation organized and existing under the laws of the State of New York, and having its principal place of business in the Southern District of New York.

5 That the West Shore Railroad Company is a corporation organized and existing under the laws of the State of New York, and having its principal place of business in the Southern District of New York.

That the Lake Shore & Michigan Southern Railway Company is a corporation organized and existing under the laws of the States of New York, Ohio, Pennsylvania, Michigan, Indiana and Illinois, and having an office for the transaction of business in the City of New York, in the Southern District of New York.

That the New York, Ontario & Western Railway
6 Company is a corporation organized and existing under the laws of the State of New York, and having its principal place of business in the Southern District of New York.

That the Erie Railroad Company is a corporation organized and existing under the laws of the State of New York, and having its principal place of business in the Southern District of New York.

That the Allegheny Valley Railway Company; the Delaware, Lackawanna & Western Railroad Company; the Lehigh Valley Railroad Company;

the Pennsylvania Company; the Pennsylvania 7
Railroad Company; the Philadelphia & Reading
Railroad Company; the Philadelphia, Wilmington
& Baltimore Railroad Company; the Pittsburg &
Western Railway Company; the Pittsburg, Cin-
cinnati, Chicago & St. Louis Railway Company
are, and each of them is, a railroad corporation
organized and existing under the laws of the State
of Pennsylvania.

That the Baltimore & Ohio Railroad Company
and the Northern Central Railway Company are
corporations organized and existing under the laws
of the State of Maryland.

That the Baltimore & Ohio Southwestern Rail- 8
way Company; the Cleveland, Cincinnati, Chicago
& St. Louis Railway Company are corporations
organized and existing under the laws of the States
of Ohio, Indiana and Illinois; that the Pittsburg
& Lake Erie Railroad Company is a corporation
organized and existing under the laws of the States
of Ohio and Pennsylvania.

That the Chesapeake & Ohio Railway Company
is a corporation organized and existing under the
laws of Virginia and West Virginia.

That the Chicago & Grand Trunk Railway Com-
pany; the Detroit, Grand Haven & Milwaukee
Railway Company; the Grand Rapids & Indiana 9
Railroad Company; the Michigan Central Railroad
Company are corporations organized and existing
under the laws of the State of Michigan.

That the Central Railroad Company of New
Jersey is a corporation organized and existing
under the laws of the State of New Jersey.

That the Chicago & Erie Railroad Company and
the Terre Haute & Indianapolis Railroad Company
are corporations organized and existing under the
laws of the State of Indiana.

10 That the Toledo, Peoria & Western Railway Company is a corporation organized and existing under the laws of the State of Illinois.

That the New York, Chicago & St. Louis Railroad Company is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio and Indiana.

That the Wabash Railroad Company is a corporation organized and existing under the laws of the States of Missouri, Ohio, Michigan, Illinois and Indiana.

That the Grand Trunk Railway Company of
11 Canada is a railroad corporation organized and existing under the laws of the Dominion of Canada.

That the Joint Traffic Association is a voluntary association organized under certain "Articles of Organization," entered into and executed by the several railroad and railway companies hereinbefore named, all of which will hereafter be more particularly set forth; and the principal place of business of said Joint Traffic Association is in the City of New York, in the Southern District of New York.

That all the defendants are common carriers, incorporated as aforesaid, either by special char-
12 ters granted by the several states of the United States, or under the public statutes of such states, as hereinbefore more particularly set forth; and as such common carriers, at all the days and times hereinafter mentioned, and prior thereto, were and still are engaged in the transportation of freight and passengers, either separately or in connection with each other, in trade and commerce continuously carried on among the several states of the United States, and among and between the several states of the United States and the territories thereof, and between such states and territories and foreign countries, and from places in the

United States through foreign countries to other 13
places in the United States.

That prior to the 19th day of November, 1895, the defendants above named, and more especially the Baltimore & Ohio Railroad Company with the railroads constituting in union with it what is termed in said agreement the Baltimore and Ohio system; the Chesapeake & Ohio Railway Company with the railroads constituting in union with it what is termed in said agreement the Chesapeake and Ohio system; the Erie Railroad Company with the railroads constituting in union with it what is termed in said agreement the Erie system; the Grand Trunk Railway Company of Canada with 14
the railroads constituting in union with it what is termed in said agreement the Grand Trunk system; the Delaware, Lackawanna & Western Railroad Company with the railroads constituting in union with it what is termed in said agreement the Lackawanna system; the Lehigh Valley Railroad Company with the railroads constituting in union with it what is termed in said agreement the Lehigh Valley system; the Pennsylvania Railroad Company with the railroads constituting in union with it what is termed in said agreement the Pennsylvania system; the New York Central & Hudson River Railroad Company, the Lake Shore & Michigan Southern Railway Company, the Michigan 15
Central Railroad Company, the West Shore Railroad Company and the other railroads constituting in union with the said four last mentioned companies what is termed in said agreement the Vanderbilt system; and the Wabash Railroad Company with the railroads constituting in union with it what is termed in said agreement the Wabash system, with their leased, controlled or operated lines, owned, operated and controlled separate railroad lines or systems, engaged with their connections independently in trade and commerce among the states and territories of the United

States and with foreign nations, and were prior to the said 19th day of November, 1895, in active competition with each other for such traffic both in freight and passengers, and furnished to all persons engaged in such traffic or travel among the states and territories of the United States separate and independent and competitive lines of transportation in respect to the traffic hereinafter mentioned.

That on or about the 19th day of November, 1895, the said railroads, unlawfully intending to restrain trade and commerce among the several states, and attempting to monopolize such trade and commerce, and intending to restrain and prevent competition among the said railroads in respect to all the inter-state trade and commerce, hereinafter more particularly described, and contriving and intending unlawfully and unjustly to deprive the public engaged in such inter-state trade and transportation of the facilities and advantages which the said public had theretofore enjoyed from the independent competition of said railroads, or any of them, in respect to the traffic hereinafter more particularly described, and intending to establish and maintain rates of freight and passenger transportation fixed arbitrarily and uninfluenced by competition in respect to such traffic between the states and territories of the United States and between such states and territories and foreign countries, entered into a certain unlawful contract, agreement, combination and conspiracy, to restrain trade and commerce among the several states, in the form of a written document, entitled "Articles of Organization of the Joint Traffic Association."

That a copy of said Articles of Organization is hereto annexed, as Exhibit "A," and as a part of this complaint.

That the said agreement establishes a Board of Managers consisting of representatives of a num-

ber of the railroad companies or systems, parties thereto, and besides conferring upon said Board of Managers many other powers more particularly set forth in the said agreement, Exhibit "A," authorizes the said Board to construe the said agreements and all resolutions adopted thereunder; to establish rates, fares, charges and rules for governing the traffic within the scope of the agreement; to determine when the said agreement has in any respect been violated by any of the parties thereto, and (within the maximum established by said agreement) to determine the amount of and assess the penalties for said violations and to decide and determine the amount of the monthly assessments to be levied by the railroad companies, parties to said agreement, as their monthly contribution to the expenses of the said Joint Traffic Association.

That by the said agreement the said companies surrendered to the said Association, subject to certain exceptions hereinafter stated, all the competitive traffic passing from, to or through the western termini of the Trunk lines, namely, Toronto, Canada; Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk and Salamanca, New York; Erie, Pittsburg and Allegheny, Pennsylvania; Bellaire, Ohio; Wheeling, Parkersburg, Charleston and Kenova, West Virginia, and Ashland, Kentucky; and such other points as might thereafter be designated as such termini by the Board of Managers constituted by said agreement; also all other traffic which might pass through other junctions of the companies, parties thereto, which is included when passing through any of the termini or junctions above stated, or that might thereafter be designated by said Board of Managers; and all such other traffic as, by common consent of the parties to said agreement, might thereafter be included within the scope of the same. All subject to the following exceptions only:

22 Coal, coke, iron ore, mill cinder, lime stone and petroleum crude or refined, and traffic destined to or coming from Florida, Georgia, North and South Carolina, Virginia and West Virginia, South of the south line of the Chesapeake & Ohio Railway.

That the traffic first above described constitutes a considerable and important part of all the freight and passenger traffic carried on between the several states and territories of the United States and between them and adjacent foreign countries, and, prior to the consummation of the oppressive and unlawful contract, agreement, combination and conspiracy aforesaid, the said railroad companies and systems, or many of them, were in active, open, 23 independent competition with each other for said traffic, to the great advantage of the public engaged in said traffic, and to the great benefit and advantage of the United States.

That in and by the terms of the aforesaid unlawful contract, agreement, combination and conspiracy, as set forth in the said Articles of Organization, Exhibit "A," the said railroad companies, parties thereto, in order to terminate all competition among themselves for the freight and passenger traffic aforesaid, unlawfully agreed to surrender the control of such traffic to the Board of Managers created by the terms of the said agreement or Arti- 24 cles of Organization as aforesaid; and further agreed, in pursuance of their said unlawful purpose, to terminate existing through, co-operative and commission freight lines, or to limit the business of the same; to abandon all independent agencies for soliciting or contracting for any of the freight or passenger traffic within the scope of the said Articles of Organization, and to vest in the said Board of Managers full authority to organize joint freight and passenger agencies, as they might deem desirable; and each and every of the said companies, in and by the said Articles of Organization, agreed not to maintain, directly or indirectly, in respect to the traffic

covered by said agreement, any freight or passen- 25
ger agency except with the approval of the said Board of Managers, and to employ nobody in soliciting or contracting for any of such traffic to whom the said Board of Managers should object; and the said companies, in and by the said agreement, surrendered to the said Board of Managers full and absolute control over all the said competitive inter-state traffic and commerce, hereinbefore more particularly described, as within the scope of said agreement.

And in and by the said agreement the said companies, unlawfully and in restraint of trade and commerce among the several states, agreed that 26
the said Board of Managers, to whom full control of all the aforesaid competitive traffic was surrendered and entrusted by the terms of said agreement, should divide the said competitive traffic among the railroad companies, parties to said agreement, in such proportions as they, the said Board of Managers, should determine, thereby unlawfully combining a large part of the freight business of the aforesaid several competing railroads and railroad systems, restraining and preventing competition among the said railroads in respect to all such competitive traffic, and thereby unlawfully restraining trade and commerce among the several states and territories of the United States, and unlawfully attempting to monopolize a part of such inter-state 27
trade and commerce.

That the said several railroads and systems, parties to said contract, agreement or Articles of Organization aforesaid, in and by the said agreement or Articles of Organization, and in furtherance of their aforesaid unlawful purpose to restrain inter-state trade and commerce by unlawfully pooling or combining the large and important part thereof, hereinbefore described, and for which, prior to the date of said agreement, the said railroads or many of them were actively and independently competing, to the

great advantage of the public, and of the United States, both in facilities and in rates, fares and charges, unlawfully agreed that the Board of Managers created by said agreement and thereby charged with the execution thereof, should have power to establish the rates, fares and charges for carrying such traffic, both freight and passenger; and conferred upon said Board of Managers, full power to determine, when in their judgment necessary, the divisions of such rates, fares and charges between connecting companies, parties to said agreement, and between companies, parties to said agreement, and other railroad companies connecting with the parties to said agreement, or any of them; thereby unlawfully, and in restraint of inter-state trade and commerce, contracting, agreeing and combining among themselves for the division between them of a portion of the earnings of the said several railroad companies, parties to the said agreement or Articles of Organization.

That in or by said agreement or Articles of Organization the railroad companies and systems aforesaid, parties thereto, further to carry out and achieve their oppressive and illegal purposes aforesaid, agreed that any failure to abide by the rates, fares and charges to govern the inter-state traffic and commerce aforesaid, as established by the Board of Managers aforesaid, should be deemed a violation of said agreement or Articles of Organization; and that the company or companies committing such violation should be subjected to severe fines and penalties, in said agreement termed "forfeitures," that is to say, the said several railroad companies, parties to the said agreement, contracted and agreed that for any action by any party to said agreement, which, in the judgment of the said Board of Managers, should constitute a violation of said agreement, the offending company should forfeit to the Association a sum or fine or penalty, to be fixed by the said Managers, not exceeding $5,000,

with power to the said Managers, where the gross 31
receipts of any railroad company, party to said agreement, from the transaction held by the said Managers to be a violation of said agreement, should exceed $5,000, to fix the said fine, penalty or forfeiture, in their discretion, at a sum equal to the whole of such gross receipts.

That for the further manifold, unjust, oppressive and unlawful provisions of said agreement or Articles of Organization, therein inserted in furtherance of the purpose of the said railroad companies, parties thereto, to combine their freight and divide their earnings, or some portion thereof, and in other respects to restrain and monopolize trade and commerce among the several states and terri- 32
tories of the United States, reference is made to the copy of said agreement, herewith annexed as Exhibit "A," as a part of this complaint.

That in and by the terms of said agreement it is provided, subject to the right of any company to retire therefrom upon giving ninety days' written notice, that the said agreement shall take effect on January 1st, 1896, and continue in existence for five years thereafter.

That it is further provided in said agreement that the Board of Managers, therein created and charged with the duty of executing the same, shall have their principal office in the City of New York, in 33
the Southern District of New York.

That the said Board of Managers has been organized under said agreement, and consists of the following named officers and agents of a number of the railroad companies, parties to said agreement, to wit:

H. J. Hayden, Second Vice-President of the New York Central & Hudson River Railroad Company (Chairman); John Burton, General Freight Agent of the Grand Trunk Railway Company of Canada; George G. Cochran, Fourth Vice-President of the

Erie Railroad Company; John B. Garrett, Third Vice-President of the Lehigh Valley Railroad Company; D. S. Gray, General Agent of the Pennsylvania Railroad Company; B. A. Hegeman, Traffic Manager of the Delaware, Lackawanna & Western Railroad Company; Milton Knight, Traffic Manager of the Wabash Railroad Company; Oscar G. Murray, Second Vice-President of the Chesapeake & Ohio Railroad Company; and Orlando Smith, First Vice-President of the Baltimore & Ohio Railroad Company.

That the said railroad companies are preparing to put into full operation all the provisions of their said unlawful agreement or Articles of Organization aforesaid, and, through their Board of Managers and other officers, are now actively holding meetings in the City of New York and Southern District of New York for such unlawful purpose—all to the great detriment and disadvantage of the public and in violation of the laws of the United States in this behalf.

In consideration whereof, the United States of America pray your Honors to adjudge and decree that the said agreement is unlawful, null and void, and that the defendants, and each and every of them, and their officers, agents and servants, and each and every of them be enjoined, perpetually, from continuing in the combination or Association established by the said agreement, and from acting or in any way operating their roads thereunder, either in respect to the provisions of said agreement, by which all the competitive traffic therein described is surrendered to a Board of Managers, to be divided by said Managers among the several companies, parties to the agreement, or in respect to the establishment of rates, fares and charges by said Board of Managers, or in respect to the division among the several companies, parties to said agreement, by said Board of Managers, of the said rates, fares and charges

for the transportation of the freight and pas- 37
senger traffic within the scope of said agreement, or in any other respect whatever; and for such other and further relief in the premises as the nature of the case shall require, and as to the Court shall seem fit.

And to the end that the United States of America may obtain the relief to which they are justly entitled in the premises, may it please your Honors, grant unto them writs of subpœna directed to the said The Joint Traffic Association; the New York Central & Hudson River Railroad Company; the West Shore Railroad Company; the New York, Ontario & Western Railway Company; the Erie 38
Railroad Company; the Allegheny Valley Railway Company; the Baltimore & Ohio Railroad Company; the Baltimore & Ohio Southwestern Railway Company; the Central Railroad of New Jersey; the Chesapeake & Ohio Railway Company; the Chicago & Erie Railroad Company; the Chicago & Grand Trunk Railway Company; the Cleveland, Cincinnati, Chicago & St. Louis Railway Company; the Delaware, Lackawanna & Western Railroad Company; the Detroit, Grand Haven & Milwaukee Railway Company; the Grand Rapids & Indiana Railroad Company; the Grand Trunk Railway Company of Canada; the Lake Shore & Michigan Southern Railway Com- 39
pany; the Lehigh Valley Railroad Company; the Michigan Central Railroad Company; the New York, Chicago & St. Louis Railroad Company; the Northern Central Railway Company; the Pennsylvania Company; the Pennsylvania Railroad Company; the Philadelphia & Reading Railroad Company; the Philadelphia, Wilmington & Baltimore Railroad Company; the Pittsburg & Lake Erie Railroad Company; the Pittsburg & Western Railway Company; the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; the Terre Haute & Indianapolis Railroad Company; the Toledo,

Peoria & Western Railway Company; the Wabash Railroad Company, and each of them, commanding them to appear herein and answer under oath the allegations contained in the complaint aforesaid made against them in behalf of the United States of America, and also a temporary writ of injunction restraining, until the further order of the Court, the said defendants and each and every of them and their representatives, officers, agents and servants, and each and every of them, from acting under, enforcing or executing the said agreement or "Articles of Organization," and from operating their said railroads thereunder, and from further proceeding in any manner to carry the said agreement into effect and operation.

WALLACE MACFARLANE,
Attorney of the United States
For the Southern District of New York,
Solicitor and of Counsel for the United States,
P. O. Building, New York, N. Y.

UNITED STATES OF AMERICA,
Southern District of New York. } *ss.*

On this 8th day of January, 1896, personally appeared before me Wallace Macfarlane, who being duly sworn, says that he is Attorney of the United States for the Southern District of New York; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief; and as to such matters he believes the said complaint to be true.

WALLACE MACFARLANE.

Sworn to before me, this 8th day of January, 1896.

MAX J. KOHLER,
Notary Public,
N. Y. County.

Exhibit "A."

43

ARTICLES OF ORGANIZATION

OF THE

JOINT TRAFFIC ASSOCIATION.

Adopted Nov. 19, 1895.

To take effect January 1st. 1896.

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49

PREAMBLE.

PURPOSES OF THIS AGREEMENT.

Purposes of this Agreement.

To aid in fulfilling the purposes of the Interstate Commerce Act, to co-operate with each other and adjacent transportation associations, to establish and maintain reasonable and just rates, fares, rules and regulations on State and Interstate traffic, to prevent unjust discrimination and to secure the reduction and concentration of agencies and the introduction of economies in the conduct of the freight and passenger service,

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Parties to this Agreement.

The Allegheny Valley Railway Company,
Baltimore & Ohio Railroad Company,
Baltimore & Ohio Southwestern Railway Company,
Central Railroad Company of New Jersey,
Chesapeake & Ohio Railway Company,

51

Chicago & Erie Railroad Company,
Chicago & Grand Trunk Railway Company,
Cleveland, Cincinnati, Chicago & St. Louis Railway Company,
Delaware, Lackawanna & Western Railroad Company,
Detroit, Grand Haven & Milwaukee Railway Company,
Erie Railroad Company,

Grand Rapids & Indiana Railroad Company,
Grand Trunk Railway Company of Canada,
Lake Shore & Michigan Southern Railway Company,
Lehigh Valley Railroad Company,
Michigan Central Railroad Company,
New York Central & Hudson River Railroad Company,
New York, Chicago & St. Louis Railroad Company,
New York, Ontario & Western Railway Company,
Northern Central Railway Company,
Pennsylvania Company,
Pennsylvania Railroad Company,
Philadelphia & Reading Railroad Company,
Philadelphia, Wilmington & Baltimore Railroad Company,
Pittsburg & Lake Erie Railroad Company,
Pittsburg & Western Railway Company,
Pittsburg, Cincinnati, Chicago & St. Louis Railway Company,
Terre Haute & Indianapolis Railroad Company (Vandalia Line),
Toledo, Peoria & Western Railway Company,
Wabash Railroad Company,
West Shore Railroad Company,

do hereby constitute the Joint Traffic Association (hereinafter called The Association), Name of Association.

and make this agreement for the pur-

pose of carrying out the objects above named.

Additional Members.

41 Other companies may become members of The Association as provided in Article Three.

42 ARTICLE ONE.

43 BOARDS OF ADMINISTRATION.

Boards of Administration and definition of terms used.

44 SECTION 1. The affairs of The Association shall be administered by three

45 Boards, with duties as hereinafter specified :

46 (*a*) A Board of control.

47 (*b*) A Board of Managers, hereinafter called The Managers.

48 (*c*) A Board of Arbitration, hereinafter called The Arbitrators.

49 SECTION 2. Wherever the term traffic is used herein it means both freight and

50 passenger traffic.

1 ARTICLE TWO.

2 TRAFFIC SUBJECT TO THE ASSOCIATION.

* Traffic included.

3 SECTION 1. The Association shall have jurisdiction over all competitive traffic

4 (subject to the exceptions noted in Section 2 of this Article) which passes to, from or

5 through the Western termini of the Trunk Lines, viz.: Toronto, Can.; Suspension Bridge,

6 Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction,

Dunkirk and Salamanca, N. Y.; Erie, Pittsburg and Allegheny, Pa.; Bellaire, O.;
Wheeling, Parkersburg, Charleston and Kenova, W. Va.; and Ashland, Ky.; and such
other points as may hereafter be designated by The Managers as such termini; also all
traffic which may pass through other junctions of the companies parties hereto which is
included when passing through any of the termini or junctions above or hereafter
specified, and such other traffic as may by common consent of the parties be hereafter
included herein.

SECTION 2. The following shall not be included: **Traffic Excluded.**

(*a*) Coal, coke, iron ore, mill cinder, limestone and petroleum, crude or refined.

(*b*) Traffic destined to or coming from Florida, Georgia, North and South Carolina, Virginia and West Virginia south of the south line of the Chesapeake & Ohio Railway.

ARTICLE THREE.

THE BOARD OF CONTROL.

SECTION 1. The Presidents of the companies forming The Association and of such other companies as may become par- **Board of Control.**

ties hereto, shall constitute the Board of Control, 61

which shall meet on the written request of any three of its members.

Representation at Meetings.

SECTION 2. In case of the absence of any member of The Board of Control from a meeting the next ranking officer in such company having jurisdiction over traffic will have authority to act in his place and stead.

Number of votes of each System. 62

SECTION 3. Each member of the Board of Control shall be entitled to one vote, except that no System as designated in Article Four shall have more than three votes in the aggregate.

Number of Votes to Decide.

It shall require three-fourths of the entire number of authorized votes to adopt any proposition coming before the Board of Control.

Compensation of Officers and Employees. 63

SECTION 4. The Board of Control shall fix the salaries of any Commissioners appointed by The Managers. The salaries of other officers and employees of The Association shall be subject to its review and approval.

Board of Control to select Arbitrators

The Board of Control shall select The Arbitrators and fix their compensation and term of service.

64 38 SECTION 5. The Board of Control shall appoint an Auditing Committee, who shall — Auditing Committee.
39 examine and report to it upon the accounts of The Association.

40 SECTION 6. The Board of Control shall prescribe the conditions and rules under — Additional Members.
41 which additional railway systems or companies shall become parties hereto and be
42 represented upon the Board of Managers.

65
43 SECTION 7. Only The Board of Control shall consider appeals from the action of — Appeals from Managers as to Rates and Fares.
44 The Managers on all questions as to rates or fares, except differentials.

45 SECTION 8. Pending decisions by The Board of Control the decisions and orders
46 of The Managers shall prevail.

1 ARTICLE FOUR.

66 2 THE BOARD OF MANAGERS.

3 SECTION 1. The Board of Managers shall consist of not less than nine members, of — Board of Managers and the Systems they represent.
4 which each of the following nine systems shall designate one:
5 Baltimore & Ohio System, now comprising the Baltimore & Ohio Railroad line
6 from Philadelphia to Parkersburg and from Philadelphia to Chicago via

Wheeling and via Pittsburg and Connellsville; Baltimore & Ohio Southwestern; Cleveland Terminal & Valley, and the Pittsburg & Western Railroad Companies, and all their leased, controlled or operated lines. 67

Chesapeake & Ohio System, now comprising the Chesapeake & Ohio; Cleveland, Cincinnati, Chicago & St. Louis, and lines composing that system, and the Peoria & Eastern Railroad Companies, and all their leased, controlled or operated lines. 68

Erie System, now comprising the Erie Railroad Company; the Chicago & Erie Railroad Company, and all their leased, controlled or operated lines.

Grand Trunk System, now comprising the Grand Trunk Railway Company of Canada and its affiliations west of the St. Clair River, viz., the Chicago & Grand Trunk; Cincinnati, Saginaw & Mackinaw; Detroit, Grand Haven & Milwaukee; Michigan Air Line, and the Toledo, Saginaw & Muskegon Railway Companies, and all their leased, controlled or operated lines. 69

Lackawanna System, now comprising the Delaware, Lackawanna & Western Railroad Company and its leased lines;

Companies comprising the Systems.

and the Syracuse, Binghamton & New
York Railroad Company, and all their leased, controlled or operated lines.
Lehigh Valley System, now comprising the Lehigh Valley Railroad Company
and all its leased, controlled or operated lines.
Pennsylvania System, now comprising the Allegheny Valley; Cumberland Valley;
Cincinnati & Muskingum Valley; Grand Rapids & Indiana; Northern Cen-
tral; Pennsylvania; Pennsylvania Company; Philadelphia, Wilmington &
Baltimore; Pittsburg, Cincinnati, Chicago & St. Louis, and the Terre Haute
& Indianapolis (Vandalia Line) Railroad Companies, and all their leased, con-
trolled or operated lines.
Vanderbilt System, now comprising the Beech Creek; Canada Southern and its
leased lines; Dunkirk, Allegheny Valley & Pittsburg; Lake Shore &
Michigan Southern; Michigan Central and its leased lines; New York Central
& Hudson River; New York, Chicago & St. Louis; Pittsburg & Lake
Erie; Rome, Watertown & Ogdensburg; Walkill Valley, and the West

Shore Railroad Companies, and all their leased, controlled or operated lines. 73

Wabash System, now comprising the Wabash Railroad Company and all its leased,

controlled or operated lines east of the Mississippi River.

Additional Managers.

SECTION 2. Additional Managers representing other systems or companies which

are now or may hereafter become parties to this Agreement, may be designated as such 74

systems or companies under the authority and rules of The Board of Control.

Term of Office and Compensation.

SECTION 3. Each Manager shall hold office during the continuance of this Agree-

ment, subject to the pleasure of, and shall be compensated by, the system appointing

him.

ARTICLE FIVE. 75

RELATING TO THE DUTIES AND POWERS OF THE MANAGERS.

Managers' Office, Sessions, Chairman.

SECTION 1. The Managers shall have their principal office in New York City and

shall continue in session subject to their rules. They shall elect a Chairman annually.

76 50 SECTION 2. The Managers shall adopt their rules and perfect their organization. Rules of Managers and vote required to adopt.

51 It shall, however, require the affirmative votes of three-fourths of their entire number

52 to adopt any proposition coming before them.

1 SECTION 3. In considering questions which exceptionally affect the interests of Questions affecting Companies unrepresented by Managers.

2 any company party hereto unrepresented upon The Board of Man-

77 agers, such company

3 shall be advised thereof and be afforded an opportunity under the rules of The Mana-

4 gers for presenting to them its views before final action is taken.

5 SECTION 4. The Managers shall construe this Agreement and all resolutions Managers to construe Agreement.

6 adopted thereunder.

7 SECTION 5. All applications for differentials and for changes in rates, Appeals from Managers to Arbitrators and Board of Control.

78 fares,

8 charges and rules shall be made to The Managers. Their action upon differentials and

9 upon all questions except as to rates and fares shall be subject to appeal, but only to

10 The Arbitrators. Their action as to rates and fares (except differentials) shall be sub-

11 ject to appeal only to The Board of Control.

Decisions and orders of The Managers shall be complied with until such appeals are decided. 79

ARTICLE SIX.

APPOINTMENT OF COMMISSIONERS.

Appointment of Commissioners.

The Managers may appoint not more than three Commissioners and shall define their powers and duties.

80

ARTICLE SEVEN.

RATES, FARES, CHARGES AND RULES.

Re-affirmation of Rates, Fares, Charges and Rules.

SECTION 1. The duly published Schedules of rates, fares and charges and the rules applicable thereto now in force and authorized by the companies parties hereto upon the traffic covered by this agreement (and filed with the Interstate Commerce Commission as to such of said traffic as is interstate), are hereby re-affirmed by the companies composing The Association, and the companies parties hereto shall within ten days after this agreement becomes effective file with The Managers copies of all such schedules of rates, fares and charges and the rules applicable thereto. 81

Managers to Recommend Changes in Rates, Fares, etc.

82 27 SECTION 2. The Managers shall from time to time recommend such changes in said

28 rates, fares, charges and rules as may be reasonable and just, and necessary for govern-

29 ing the traffic covered by this Agreement and for protecting the interests of the parties

30 hereto therein, and the failure to observe such recommendations by any party hereto as

31 and when made shall be deemed a violation of this Agreement. No

83 company party

32 hereto shall through any of its officers or agents deviate from or change the rates, fares,

33 charges or rules herein re-affirmed or so recommended by The Managers, except by a

34 resolution of its Board. The action of such Board shall not affect the rates, fares,

35 charges or rules disapproved except to the extent of its interest therein over its own

84 36 road. A copy of the resolution of the Board of any company party hereto authorizing

37 any such change shall be immediately forwarded by the company making the same to

38 The Managers and such change shall not become effective until thirty days after the

39 receipt of such resolution by The Managers. The Managers, upon receiving such

notice, shall act promptly upon the same for the protection of the parties hereto. 85

SECTION 3. The powers conferred upon The Managers shall be so construed and

exercised as not to permit violation of the Interstate Commerce Act or any other law

applicable to the premises, or any provision of the charters or the laws applicable to any

of the companies parties hereto, and The Managers shall co-operate with the Interstate 86

Commerce Commission to secure stability and uniformity in the rates, fares, charges

and rules established hereunder.

Managers not to permit violations of law, and to co-operate with Interstate Commerce Commission.

ARTICLE EIGHT.

PROPORTIONS OF COMPETITIVE TRAFFIC.

The Managers are charged with the duty of securing to each company party

hereto, equitable proportions of the competitive traffic covered by this agreement so 87

far as can be legally done.

Proportions of Competitive Traffic.

ARTICLE NINE.

RELATIONS TO NON-CONCURRING COMPANIES AND REVISIONS OF RATES AND FARES.

SECTION 1. The Managers shall decide and enforce the course which shall be

Action as to Non-Concurring Companies.

pursued with connecting companies not parties to this Agreement, which fail or decline to observe the rates, fares, charges and rules established under this Agreement. The interests of companies parties hereto injuriously affected by such action of The Managers, shall in such instances, be accorded reasonable protection in so far as The Managers can legally do so.

Divisions of Rates and Fares.

SECTION 2. When in their judgment necessary to the purposes of this Agreement, The Managers may determine the divisions of rates and fares between connecting companies parties hereto and between them and connections not parties hereto, keeping in view uniformity and the equities involved.

ARTICLE TEN.

LIMITATION OF POWERS OF FREIGHT LINES.

Limitation of Powers of Freight Lines.

It is recognized and agreed that economy in the operation of through co-operative and commission freight lines and the limitation or termination of many of their existing powers and functions are absolutely required, and the companies parties hereto

will actively co-operate with The Managers and so manage such lines as to accomplish such results. 91

ARTICLE ELEVEN.

MANAGERS MAY ORGANIZE JOINT AGENCIES.

Organization of Joint Agencies.

The Managers shall have authority to organize such joint freight and passenger agencies as they may deem desirable, provided that if such joint agencies are established they shall be so arranged as will give proper representation to each company party hereto. 92

ARTICLE TWELVE.

MANAGERS TO APPROVE CONTRACTING AGENCIES.

Soliciting and Contracting Agencies.

No soliciting or contracting passenger or freight agency shall be maintained directly or indirectly by any of the companies parties hereto or by any freight line in connection with the traffic covered by this Agreement, except with the approval of The Managers, and no person who is decided by The Managers to be objectionable shall be employed or continued in such agency. 93

ARTICLE THIRTEEN.

MANAGERS TO DEFINE DUTIES OF CONTRACTING AGENTS.

Duties and Authority of Soliciting Agents.

SECTION 1. The Managers shall define the authority and duties of all persons acting as contracting and soliciting freight and passenger agents in relation to the traffic covered hereby, and, with due regard to the relative interests involved, they may determine the number of such persons to be employed. The parties hereto shall observe and enforce the orders of The Managers from time to time issued in that behalf.

Soliciting Agents on Association Pay-rolls.

SECTION 2. Such contracting and soliciting agents as The Managers appoint shall be carried upon the pay-rolls of The Association.

Grand Trunk Soliciting Agents in Canada.

SECTION 3. The Grand Trunk Company may appoint soliciting agents to be located at such points in Canada as may be necessary to meet the competition of Canadian lines not parties hereto, but such persons shall in all respects be subject to the rules of The Managers.

97

ARTICLE FOURTEEN.

COMPLAINTS AND INVESTIGATIONS THEREOF.

Investigations and Evidence to be furnished.

When in the judgment of The Managers their information or any complaint so warrants, the officials and employees of the companies parties hereto may be examined, and in such investigation any or all officials or employees may be notified to attend, and any or all matters affecting directly or indirectly the traffic herein covered may be considered.

98

ARTICLE FIFTEEN.

REPORTS AND DATA TO BE FURNISHED.

Parties hereto to furnish Reports, etc.

The companies parties hereto agree to furnish to The Managers all reports, papers and information relating to the traffic covered hereby, which may be requested by them.

99

ARTICLE SIXTEEN.

FORFEITURES FOR VIOLATIONS OF AGREEMENT.

Forfeitures for Violations.

For any action by any party hereto which in the judgment of The Managers constitues a violation of this Agreement the offending Company shall forfeit to The

Association a sum to be determined by The Managers, not exceeding five thousand dollars, but where the gross receipts of the transaction in which this Agreement is violated shall exceed five thousand dollars the offending party shall, at the discretion of The Managers, forfeit a sum not exceeding such gross receipts. Such forfeitures shall be applied to the payment of the expenses of The Association, except that the offending company shall not participate in such application of its own forfeiture.

ARTICLE SEVENTEEN.

DEPOSITS, EXPENSE FUND, AND PROVISION FOR FORFEITURES.

Provisions for Fund Expenses and Monthly Deposits.

SECTION 1. Upon the call of The Managers after this Agreement becomes effective, each company party hereto shall deposit with them the sum of five thousand dollars, and in addition thereto, upon their like call, such further sums monthly, based upon the gross earnings of each company party hereto from the traffic covered hereby, as The Managers may decide to be necessary to defray the expenses of The Association,

including the salaries of the Commissioners and Arbitrators, and to provide for such 103

forfeitures as may be adjudged.

Payment of Forfeitures

SECTION 2. Any forfeiture made by any company party hereto, under the rules,

shall be taken from the sums contributed by such company and charged in whole to its

account. If this deposit at the time, exclusive of its said original contribution of five

thousand dollars, shall be insufficient, 104 it shall pay to The Managers such deficiency

within fifteen days after the forfeiture is finally adjudged.

Distribution of Balance.

SECTION 3. The balance of said deposits remaining at the expiration of this

Agreement shall be divided between the companies then parties hereto in the ratio in

which they have contributed, less the amounts forfeited. 105

ARTICLE EIGHTEEN.

RETIREMENT FROM THE AGREEMENT.

Retirement from Agreement.

Any party retiring from this Agreement before the final completion of the time

herein fixed, except by unanimous consent of the parties hereto, shall not be entitled to

any refund from the residue of deposits remaining at the close of this Agreement, but if any company fails to observe and be governed by this Agreement, which fact shall be determined by The Arbitrators, and then fails to pay its forfeitures within fifteen days after such decision of The Arbitrators, then any other company may withdraw from this Agreement upon giving thirty days written notice to The Managers and such company so withdrawing shall be entitled to the residue of the funds it has contributed.

ARTICLE NINETEEN.

BOARD OF ARBITRATION.

Board of Arbitration

SECTION 1. There shall be a permanent Board of Arbitration consisting of three disinterested persons to which appeals shall be made as to all questions, including differentials, arising under this Agreement, except the determination of rates and fares.

All Differences to be Arbitrated.

SECTION 2. All differences between the parties hereto as to any lawful measure necessary to carry out the objects of The Association, except as to rates and fares

shall be submitted to and be finally decided by The Arbitrators.

Managers' Decision to prevail pending Arbitration

SECTION 3. Pending decisions of The Arbitrators the decisions and orders of the Board of Control and Managers shall prevail.

Hearings by the Arbitrators

SECTION 4. Hearings shall be had upon all questions arbitrated, under the rules established by The Arbitrators and approved by The Board of Control and the decision of The Arbitrators or of any two of them shall be final.

ARTICLE TWENTY.

AMENDMENTS.

Amendments.

Amendments to this Agreement shall only be made by the unanimous vote of the parties hereto.

ARTICLE TWENTY-ONE.

WHEN AGREEMENT BECOMES EFFECTIVE AND ITS DURATION.

When Agreement takes Effect.

SECTION 1. This Agreement shall not be effective until it shall have been approved by the Boards of Directors of the several companies parties hereto. Certified copies of resolutions giving such approval shall be filed with The Managers.

112 23 SECTION 2. This Agreement shall take effect January 1st, 1896, and shall con- **Duration of Agreement.**

24 tinue in existence for five years thereafter. After said period, any company may retire

25 therefrom upon giving ninety days written notice of its desire to do so.

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26 The Philadelphia & Reading Rail- **Status of Phila. and Reading Railroad.**

113 road Company being legally incapacitated from

27 signing this contract at present, but having so far as it can do so indicated

28 through its President and Receivers and proposed Reorganization Committee its

29 desire to act in harmony therewith and observe its terms, it is understood that the

30 parties hereto will waive the signature of that company until it is reorganized; and

114 31 be bound by this Agreement only so long as that company observes its conditions,

32 which fact shall be determined by The Arbitrators provided herein.

IN WITNESS WHEREOF, the corporations, parties hereto, have caused the foregoing Agreement to be signed by their respective Presidents and the Seal of their respective corporations to be attached hereto.

ALLEGHENY VALLEY RAILWAY COMPANY.

(L.S.) W. H. Barnes, President.

THE BALTIMORE & OHIO RAILROAD COMPANY.

(L.S.) By Charles F. Mayer, President.
Attest, Andrew Anderson, Secretary.

THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY.

(L.S.) By Edward R. Bacon, its President.
Attest, Edward Bruce, Secretary.

CENTRAL RAILROAD CO. OF NEW JERSEY.

(L.S.) J. R. Maxwell, President.
Attest, Sam'l Knox, Secretary.

CHESAPEAKE & OHIO RAILWAY CO.

(L.S.) By M. E. Ingalls, President.

THE CHICAGO & ERIE RAILROAD COMPANY.

(L.S.) By J. G. McCullough, President.

THE CHICAGO & GRAND TRUNK RY. CO.

(L.S.) By L. J. Seargeant, its President.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RY. CO.

(L.S.) By M. E. Ingalls, President.

THE PEORIA & EASTERN RY. CO.

(L.S.) By M. E. Ingalls, President.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

(L.S.) By Sam. Sloan, President.
Attest, Fred. F. Chambers, Secretary.

118 THE DETROIT, GRAND HAVEN & MILWAUKEE RY. COMPANY.

(L.S.) By L. J. Seargeant, its President.

ERIE RAILROAD CO.

(L.S.) E. B. Thomas, President.

THE GRAND RAPIDS & INDIANA RAILROAD COMPANY.

(L.S.) By J. H. P. Hughart, Second Vice-President.
Attest, R. R. Metheany, Secretary.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

(L.S.) By L. J. Seargeant, its General Manager.

119 THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY.

(L.S.) By D. W. Caldwell, President.
Attest, N. Bartlett, Ass't Secretary.

LEHIGH VALLEY R. R. CO.

(L.S.) E. P. Wilbur, President.
Attest, Jno. R. Fanshawe, Secretary.

THE MICHIGAN CENTRAL RAILROAD COMPANY.

(L.S.) By H. B. Ledyard, President.
Attest, E. D. Worcester, Secretary.

THE NEW YORK CENTRAL & HUDSON RIVER
120 RAILROAD COMPANY.

(L.S.) By Chauncey M. Depew, President.
Attest, E. D. Worcester, Secretary.

THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD CO.

(L.S.) By S. R. Callaway, its President.
Attest, Allyn Cox, Secretary.

NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY.

(L.S.) By T. P. Fowler, President.
Attest, R. D. Rickard, Secretary.

THE NORTHERN CENTRAL RAILWAY COMPANY. 121

(L.S.) By G. B. Roberts, President.
Attest, Stephen W. White, Secretary.

PENNSYLVANIA COMPANY.

(L.S.) By G. B. Roberts, President.
Attest, S. B. Liggett, Secretary.

THE PENNSYLVANIA RAILROAD COMPANY.

(L.S.) By G. B. Roberts, President.
Attest, J. C. Sims, Secretary.

THE PHILADELPHIA & READING RAILROAD COMPANY.

By action of its Receivers and Board of Managers, pursuant to the last clause of this Agreement and duly filed. See Attached copy. F. H. H. 122

THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY.

(L.S.) By G. B. Roberts, President.
Attest, D. S. Newhall, Assistant Secretary.

THE PITTSBURG & LAKE ERIE RAILROAD COMPANY.

(L.S.) By D. W. Caldwell, President.
Attest, John G. Robinson, Secretary.

THE PITTSBURG & WESTERN RAILWAY COMPANY. 123

(L.S.) By Thos. M. King, President.
Attest, T. J. Crump, Secretary.

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY CO.

(L.S.) By G. B. Roberts, President.
Attest, S. B. Liggett, Secretary.

TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY.

(L.S.) By W. R. McKeen, President.
Attest, Geo. E. Farrington, Secretary.

124 THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY.

(L.S.) By E. F. Leonard, President.
Attest, E. D. Usner, Secretary.

THE WABASH RAILROAD CO.

(L.S.) By O. D. Ashley, President.
Attest, J. C. Otteson, Secretary.

THE WEST SHORE RAILROAD COMPANY.

(L.S.) By Chauncey M. Depew, President.
Attest, E. V. W. Rossitter, Secretary.

A true copy of the original on file in the office of
125 the Joint Traffic Association, 143 Liberty St., New York City.

FRANK H. HOYT,
Secretary.

Sworn to before me, this 23rd day of Dec., 1895.

JAMES H. REILLY,
Notary Public,
N. Y. Co.

126

"The Receivers of the Philadelphia & Reading 127
Railroad Company, having duly considered the Articles of Organization of the Joint Traffic Association, now under discussion by the companies constituting the Trunk Line and Central Traffic Associations, approve the spirit and purpose thereof, and authorize Mr. Joseph S. Harris to express on our behalf our willingness to be governed by the terms thereof in the conduct of the competitive traffic to be transmitted over the lines of railroad under our charge, so far as he may be advised by counsel that the same may be lawfully done. Also to agree in our behalf to contribute towards the expenses of the maintenance of the Joint Traffic Association such amounts as shall 128
not exceed the rate of contribution hitherto made by us for the maintenance of the Trunk Line Association."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the Receivers of the Philadelphia and Reading Railroad Company, held October 28, 1895.

(Signed) W. R. TAYLOR,
Secretary to the Receivers.

"Mr. Harris stated to the Receivers the substance of the conference held yesterday in New York with the representatives of the companies, who are about 129
to form the Joint Traffic Association, and read the modification of the Second Section of the Fifth Article which had been agreed upon entitling this company to a hearing before any action by The Managers should become effective in cases exceptionally affecting the interests of the Reading Company. After full consideration Mr. Harris' action was approved, and he was authorized to state that the conduct of the competitive traffic to be transmitted over the lines of the Reading Railroad Company shall be governed by the terms of the proposed Agreement so far as he may be advised by counsel that the same may be lawfully done."

130 I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the Receivers of the Philadelphia and Reading Railroad Company, held November 20, 1895.

(Signed) W. R. TAYLOR,
Secretary to the Receivers.

"The President reported that after the passage of the resolutions of the Board at their meeting of October 29th, at a meeting of the Committee in charge of the preparation of the Articles of Organization of the Joint Traffic Association, and afterwards at the meeting of the Presidents of the Trunk
131 Line Association and the Central Traffic Association, on November 19th, he had carefully stated the action which the Company and the Receivers were prepared to take in relation to the Joint Traffic Association. After considerable discussion of the proposed exceptional relations of the Reading Railroad Company to the Joint Traffic Association, the Presidents' meeting agreed that the Reading's position should be recognized and the action authorized by the Receivers and the Company should be taken as a sufficient indication of their purpose to act in harmony with the other transporting companies. A number of verbal alterations, mostly made for the purpose of bringing the organization more thoroughly into harmony with
132 the existing laws, but none of them involving changes of importance, had been made in the Articles of Organization since it was last presented to this Board. The President had urged upon the meeting that some provision should be made to better care for the interests of Companies unrepresented in the Board of Managers, in regard to questions exceptionally affecting their interests which should come before that Board, and had obtained the insertion of Section Three, Article Six, which gives to such Companies the right to be heard before the Board of Managers on questions which exceptionally affect their interests.

The President laid the Articles of Organization, as finally adopted at the meeting of November 19th, before the Board, and stated in detail the main features of the Articles, whereupon it was, upon motion, 133

Resolved, That the Board approves of the spirit and purpose of the Joint Traffic Association as expressed in the formal contract now presented, and requests the Receivers to act in harmony with the provisions of the Agreement, dated November 19, 1895, constituting that Association, so far as they may be advised by counsel that the same may be lawfully done."

I hereby certify that the foregoing is a true and correct extract from the minutes of the meeting of the Board of Managers of the Philadelphia & Reading Railroad Company, held December 11, 1895. 134

. . . . . (Signed) W. R. TAYLOR,
: SEAL. : Secretary.
. . . . . .

A true copy of the original on file in the office of the Joint Traffic Association, 143 Liberty Street, New York City.

F. H. HOYT,
Secretary.

Sworn to before me, this 23d day of Dec., 1895. } 135

. . . . . JAS. H. REILLY,
: SEAL. : Notary Public,
. . . . . N. Y. Co.

(Endorsed):—United States Circuit Court, Southern District of New York. In Equity.—The United States of America, vs. The Joint Traffic Association, The New York Central & Hudson River Railroad Company and others.—Bill of Complaint.—Wallace Macfarlane, U. S. Attorney, P. O. Building, New York City.—U. S. Circuit Court, Filed Jan. 9, 1896.—John A. Shields, Clerk.

136 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, against THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY 137 and others.	In Equity.

On the annexed affidavit of Wallace Macfarlane, verified herein on the 9th day of March, 1896, it is

Ordered, that the plaintiffs in the above entitled suit have leave to amend their bill of complaint by filing the proposed amendment attached to said affidavit.

That a copy of said amendment be served upon such defendants as have appeared in the said suit.

E. HENRY LACOMBE,
U. S. Circuit Judge.

138

UNITED STATES CIRCUIT COURT,
SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

against

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY and others.

In Equity.

140

UNITED STATES OF AMERICA,
Southern District of New York. } *ss.*

WALLACE MACFARLANE, being duly sworn, says that he is the United States Attorney for the Southern District of New York; that a bill of complaint herein was filed on the 8th day of January, 1896; that copies thereof have been served; that none of the defendants have as yet filed their answers to said bill; that deponent desires to file an amendment to said bill of complaint, and that a copy of said proposed amendment is hereto annexed.

141

WALLACE MACFARLANE.

Sworn to before me this 9th day of March, 1896.

MAX J. KOHLER,
Notary Public,
N. Y. Co.

142 UNITED STATES CIRCUIT COURT

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES OF AMERICA,

against

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE WEST
143 SHORE RAILROAD COMPANY and others.

AMENDMENT TO BILL OF COMPLAINT.

(Filed March 9th, 1896.)

Insert at the end of folio 11 in said bill and prior to folio 12 the following allegation:

That heretofore and on or about December 26th, 1895, the Interstate Commerce Commission notified the Attorney General of the United States that the commission considered the contract, agreement
144 or arrangement hereinafter referred to as Exhibit "A" and entitled "Articles of Organization of the Joint Traffic Association" to be in conflict with the Act to regulate commerce, etc. (said Act being an Act passed February 4th, 1887, and amended by the Acts of March 2nd, 1889, February 10th, 1891, and February 8th, 1895), and requested the said Attorney General to direct the United States Attorney for the Southern District of New York to institute in the proper court and to prosecute under the direction of said Attorney General all necessary proceedings by way of injunction or otherwise to prevent the carrying into effect of said contract, agree-

ment or arrangement as contemplated, and to pre- 145
vent any violation of said Act to regulate commerce by reason of said contract, agreement or arrangement.

And the said Attorney General did thereupon direct the said United States Attorney for the Southern District of New York to institute all necessary proceedings to prevent the parties to said agreement from carrying the same into effect and to have the said agreement declared null and void, both on the ground that said agreement appeared to be in violation of the provisions of the said Act to regulate commerce as amended, and also in violation of the Act of July 2nd, 1890, entitled "*An Act to Protect Trade and Commerce Against Unlawful Re-* 146
straints and Monopolies," and on all other grounds (if any) by reason of which the said agreement was contrary to law and in violation of the rights of the citizens of the United States.

(Endorsed):—U. S. Circuit Court, Southern District of New York.—United States versus The Joint Traffic Association, The New York Central & Hudson River Railroad Company, The West Shore Railroad Company and others,—Amendment to Bill of Complaint.—Wallace Macfarlane, United States Attorney, Attorney for Plaintiff.—U. S. Circuit Court. Filed March 9. 1896.—John A. Shields, Clerk.

147

148 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, et al.

149

The Clerk of this Court will please enter an appearance in this cause as solicitors for the defendant, The Joint Traffic Association, without prejudice to our right to move to have the name of said The Joint Traffic Association stricken from the record as having been improperly made a party defendant.

Dated, New York, Feby., 3, 1896.

CARTER & LEDYARD,
Solicitors for Defendant,
THE JOINT TRAFFIC ASSOCIATION,
appearing as above.

150

To
JOHN A. SHIELDS, Esq.,
Clerk.

(Endorsed):—U. S. Circuit Court, Southern Dist. of New York.—The United States of America vs. The Joint Traffic Association, The New York Central & Hudson River Railroad Company, et al.—Precept to Enter Appearance.—Carter & Ledyard, Solicitors for the Defendant, The Joint Traffic Association, 54 Wall St., N. Y.—U. S. Circuit Court, Filed Feb. 3, 1896.—John A. Shields, Clerk.

CIRCUIT COURT OF THE UNITED STATES 151

For the Southern District of New York.

The United States of America,

against

The Joint Traffic Association, The New York Central & Hudson River Railroad Company, et al.

In Equity.

152

To

John A. Shields, Esq.,
Clerk of the Circuit Court of the United States
For the Southern District of New York.

Sir:—

Please enter my appearance in the above entitled suit as the solicitor for the defendant, The New York Central & Hudson River Railroad Company.

Dated, February 3, 1896.

Frank Loomis,
Office and P. O. Address, Room 9,
Offices of The N. Y. C. & H. R. R. Co.,
Grand Central Depot, 153
42nd Street and 4th Avenue,
New York.

(Endorsed):—Circuit Court of the United States for the Southern District of New York. In Equity.—The United States of America agst. The Joint Traffic Association, The New York Central & Hudson River Railroad Company, et al.—Notice to Clerk to Enter Appearance. February 3, 1896.—Frank Loomis, Solicitor for The N. Y. C. & H. R. R. Co.—U. S. Circuit Court, Filed February 3, 1896.—John A. Shields, Clerk.

154 IN CIRCUIT COURT,

SOUTHERN DIST. OF N. Y.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, et al.

To

155 The Clerk of the Circuit Court, Southern District of New York.

Please enter my appearance as solicitor for the Lake Shore & Michigan Southern Railway Company and the Pittsburg & Lake Erie Railroad Company.

GEO. C. GREENE,
Solr. for L. S. & M. S. Ry. Co. &
P. & L. E. Rd. Co..
176 North St.,
Buffalo, N. Y.

Dated, N. Y., Feb. 3, 1896.

156 (Endorsed):—U. S. Circuit Court, Southern District of New York.—The United States vs. The Joint Traffic Association.—Appearance of Lake Shore & Michigan Southern Railway Company and the Pittsburg & Lake Erie Railroad Company.—Geo. C. Greene, Defts. Solr.—U. S. Circuit Court, Filed Feb. 3, 1896.—John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT, 157

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE PENNSYLVANIA RAILROAD COMPANY and others.

In Equity.

158

The Clerk of the above entitled Court will please enter my appearance as solicitor for the Pennsylvania Railroad Company only in the above entitled cause.

Dated, New York, February 3, 1896.

HENRY G. WARD,
Solicitor for Pennsylvania R. R. Co.,
No. 160 Broadway, N. Y.

(Endorsed):—United Sates Circuit Court, S. D. N. Y.—The United States of America against The Joint Traffic Association, The Pennsylvania Railroad Company and others.—Notice of Appearance.—Henry G. Ward, Solicitor for Pennsylvania Company, 160 Broadway, New York.—U. S. Circuit Court. Filed Feb. 3, 1896. —John A. Shields, Clerk. 159

160 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, LEHIGH VALLEY RAILROAD COMPANY and others. } In Equity.

161

To

JOHN A. SHIELDS, Esq.,
Clerk of the United States Circuit Court
For the Southern District of New York.

You will please enter our appearance for the defendant, Lehigh Valley Railroad Company, in the above entitled suit.

Dated, New York, February 3rd, 1896.

Yours, &c.,

162

ALEXANDER & GREEN,
Solicitors for Defendant,
Office & P. O. Address, 120 Broadway,
New York City, N. Y.

(Endorsed):—U. S. Circuit Court, Southern Dist. of New York.—The U. S. of America v. Joint Traffic Assn.—Precept to Enter Appearance for Deft. Lehigh Valley R. R.—Alexander & Green, Solrs. for Deft. L. V. R. R., 120 Broadway, N. Y. City.—U. S. Circuit Court, Filed Feb. 3, 1896.—John A. Shields, Clerk.

U. S. CIRCUIT COURT, 163

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, et al.

Notice of Appearance.

Please take notice that we are retained and appear in this action as attorneys for the defendants, 164
Chesapeake & Ohio Railway Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Erie Railroad Company and Chicago & Erie Railroad Company, and demand that a copy of the complaint and all papers in this action be served on us at our office, number 15 Broad Street, New York City, New York.

Dated, New York, January 15th, 1896.

STETSON, TRACY, JENNINGS & RUSSELL,
Office and Post Office Address,
15 Broad Street, New York City,
New York,
Attorneys for Defendants. 165

To
WALLACE MACFARLANE, Esq.,
U. S. District Attorney,
Attorney for Plaintiff,
Post Office Building,
New York City.

(Endorsed):—U. S. Circuit Court, Southern District of N. Y.—The United States of America vs. The Joint Traffic Association, et al.—Notice of Appearance.—Stetson, Tracy, Jennings & Russell, 15 Broad Street, N. Y. City, Attorneys for Defendants.—U. S. Circuit Court, Filed Feb. 3, 1896.—John A. Shields, Clerk.

166 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, against THE JOINT TRAFFIC ASSOCIATION and others.	In Equity.

To the

Clerk of the Circuit Court of the United States
For the Southern District of New York.

167 Sir:—

You will please enter my appearance as solicitor for the following named defendants, to wit:

The West Shore Railroad Company,
The New York, Ontario & Western Railway Company,
The Michigan Central Railroad Company,
The New York, Chicago & St. Louis Railroad Company,
The Grand Trunk Railway Company of Canada,
The Chicago & Grand Trunk Railway Company, and
The Detroit, Grand Haven & Milwaukee Railway Company.

168 Dated, February 3, 1896.

ASHBEL GREEN,
Solicitor for the above named Companies,
Office and P. O. Address,
No. 5 Vanderbilt Avenue,
New York City.

(Endorsed):—U. S. Circuit Court, Southern District of New York.—United States of America vs. The Joint Traffic Association, et al.—Notice of Appearance.—Ashbel Green, 5 Vanderbilt Ave., N. Y. City, Attorney for Defendants.—U. S. Circuit Court, Filed Feb. 3, 1896.—John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT. 169

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

THE UNITED STATES OF AMERICA

Plaintiff,

against

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, impleaded with THE JOINT TRAFFIC ASSOCIATION and others.

Defendants.

Notice of Appearance.

170

Sir:—

Please take notice that the defendant, the Central Railroad Company of New Jersey, hereby appears in the above entitled action, and that we are retained as attorneys for

therein, and hereby demand that copies of all papers in this action be served on us at our office, number 62 William Street, New York City, N. Y.

Dated, February 14, 1896.

Yours, &c.,

DE FOREST BROTHERS,

Attorneys for Defendant,

Central Railroad Company of New Jersey. 171

Office and Post Office Address,

62 William St., N. Y. City.

To

WALLACE MACFARLANE, Esq.,

U. S. Attorney.

(Endorsed):—U. S. Circuit Court.—The United States of America, Plaintiff, against the Central Railroad Company of New Jersey, impleaded with the Joint Traffic Association and others, Defendant.—Notice of Appearance of Defendant, C. R. R. Co. of N. J.—De Forest Brothers, Attorneys for Defendant, C. R. R. Co. of N. J.—U. S. Circuit Court, Filed Feb. 14, 1896.—John A. Shields, Clerk.

172 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY and others.

173

Please enter my appearance in the above cause for the defendant, The Delaware, Lackawanna & Western Railroad Company.

Dated, New York, January 27th, 1896.

Yours, &c.,

HAMILTON ODELL,
Solicitor for the D., L. & W. R. R. Co.,
120 Broadway,
New York City.

To
JOHN A. SHIELDS, Esq.,
Clerk, &c.

174

(Endorsed):—United States Circuit Court, Southern District of New York. In Equity.—The United States of America vs. The Joint Traffic Association, The Delaware, Lackawanna & Western Railroad Company and others.—Notice of Appearance.—Hamilton Odell, Solicitor for the D., L. & W. R. R. Co., 120 Broadway, New York City.—U. S. Circuit Court, Filed Jan. 29, 1896.—John A. Shields, Clerk.

CIRCUIT COURT OF THE UNITED STATES, 175

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, vs. THE JOINT TRAFFIC ASSOCIATION and others.	In Equity.

The Clerk will please enter my appearance as solicitor for the following named respondents only 176
in the above entitled cause, viz:

Allegheny Valley Railway Company.
Northern Central Railway Company.
Pennsylvania Company.
Philadelphia, Wilmington & Baltimore Railroad Company.
Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company.
Terre Haute & Indianapolis Railroad Company.
Toledo, Peoria & Western Railway Company.
Grand Rapids & Indiana Railroad Company.

Dated, New York, February 13th, 1896.

177

HENRY G. WARD,
Solicitor for Defendants above named,
Office and Post Office Address,
160 Broadway, New York.

(Endorsed):—United States Circuit Court, S. D. N. Y.—The United States of America against The Joint Traffic Association and others.—Notice of Appearance.—Henry G. Ward, Solicitor for Defts., No. 160 Broadway, New York.—To Clerk, United States Circuit Court.—U. S. Circuit Court, Filed Feb. 13, 1896.—John A. Shields, Clerk.

178 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, et al.

} In Equity.

179

JOHN A. SHIELDS, Esq.,
Clerk, &c.

In the above entitled suit, please enter the appearance of the defendants, The Baltimore & Ohio Railroad Company, The Baltimore & Ohio Southwestern Railway Company and The Pittsburg & Western Railway Company, by the undersigned as solicitors.

E. G. D. CROSS,
HUGH L. BOND, Jr.,
Solicitors for Defendants.

180

(Endorsed):—United States Circuit Court, Southern District of New York.—United States of America vs. New York Central & Hudson River R. R. Co., et al.—Entry of Appearance for Baltimore & Ohio R. R. Co., et al.—U. S. Circuit Court, Filed Feb. 13, 1896.—John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT, 181

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO., THE WABASH RAILROAD COMPANY and others. } In Equity. 182

Now comes the Wabash Railroad Company, defendant in the above entitled cause, by Wells H. Blodgett and Clarence D. Ashley, its attorneys, and enters its appearance as a defendant therein.

THE WABASH RAILROAD COMPANY,

By WELLS H. BLODGETT,
CLARENCE D. ASHLEY,
Attorneys,
207 Broadway.

183 (Endorsed):—United States Circuit Court, Southern District of New York.—United States of America vs. The Joint Traffic Association, The New York Central & Hudson River Railroad Co., The Wabash Railroad Co. and others.—Appearance of the Wabash Railroad Co.—U. S. Circuit Court, Filed Feb. 14, 1896.—John A. Shields, Clerk.

184 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY
185 COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY;
186 THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY,
Defendants.

ANSWER OF DEFENDANT, The Joint Traffic Association.

The answer of THE JOINT TRAFFIC ASSOCIATION, one of the defendants in the above-entitled suit to the bill of complaint of the United States of America, complainant therein.

This defendant, now and at all times hereafter 187
saving and reserving to itself all and all manner of benefit, exception or advantages which can or may be had or taken to the many errors, uncertainties, insufficiencies or other imperfections, in the said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are necessary or material for it to make answer to, answering says:

I. That it admits:

That the several railroad companies, defendants herein, are incorporated as in said bill of complaint alleged.

That The Joint Traffic Association is a voluntary 188
association organized under certain "Articles of Organization," entered into and executed by the said several railroad and railway companies, on or about the nineteenth day of November, 1895, a copy of which is annexed to the said bill of complaint as Exhibit A, and that the principal place of business of said Joint Traffic Association is in the City of New York, in the Southern District of New York; but this defendant avers that the said Joint Traffic Association is not incorporated, is not a common carrier and is not engaged in the transportation of freight or passengers.

189

II.—This defendant further admits that all of said corporations defendant are common carriers and as such, at all the days and times mentioned in the bill of complaint and prior thereto, were and now are engaged in the transportation of freight and passengers, either separately or in connection with each other, continuously carried on among the several States of the United States, and among and between the several States of the United States and the Territories thereof, and between such States and Territories and foreign countries, and from places in the United States through foreign countries to other places in the United States.

190 But this defendant denies that any or either of said corporations have ever been otherwise engaged in interstate commerce, or that they, or any or either of them, have ever been engaged in any trade in or in relation to any article or commodity in anywise embraced within the operation or scope of said agreement.

III.—This defendant further admits that prior to the 19th day of November, 1895, the several railroad companies constituting what are termed in said agreement respectively the Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh Valley, the
191 Pennsylvania, the Vanderbilt and the Wabash systems, with their leased, controlled, or operated lines, owned, operated and controlled separate railroad lines or systems, engaged with their connections independently in commerce among the States and Territories of the United States and with foreign nations and were in active competition with each other for such traffic, both in freight and passengers, and furnished to all persons engaged in such traffic or travel among the States and Territories of the United States separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned; and this defendant avers that ever since the said 19th day of
192 November, 1895, the said railroad companies have continued to own, operate and control the same separate railroad lines or systems, engaged with their connections independently in said commerce, and that they have ever since continued to be and still are in active competition with each other for such traffic, and have ever since furnished and still continue to furnish to all persons engaged in such traffic or travel the same separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned.

IV.—This defendant further admits and answers 193
that on or about the 19th day of November, 1895, the said railroad companies entered, as they were and are advised and believe they had a lawful right to do, into the certain contract, in the form of a written document, entitled "Articles of Organization of the Joint Traffic Association" hereinbefore mentioned.

But this defendant denies that the said contract is an unlawful contract in any of its provisions, or that it is or was intended to be a contract, agreement, combination or conspiracy to restrain trade or commeree among the several States, or was or is an attempt to monopolize, or does or will operate to monopolize, such trade or commerce, or is or was 194
intended to restrain or prevent legitimate competition among such railroads in respect to any inter-state trade or commerce, or does in any way restrain or prevent legitimate competition among said railroads in respect to any of such trade or commerce, or that the said companies or any or either of them in entering into said contract or at any time contrived or intended, or now intend to deprive the public, or have deprived the public engaged in any inter-state trade or transportation of any facilities or advantages which the said public theretofore had lawfully enjoyed from any independent competition of said railroads, or any or either of them, in respect to the traffic described in the bill of 195
complaint, or that the said companies, or any or either of them, at any time intended or now intend to establish or maintain rates of freight or passenger transportation fixed arbitrarily or uninfluenced by competition in respect to any traffic whatever; or that the effect of the said agreement is to establish or maintain rates of freight or passenger transportation fixed arbitrarily, or uninfluenced by competition in respect to any traffic whatever.

V.—This defendant admits that the said agreement establishes a Board of Managers consisting

196 of representatives of a number of the railroad companies or systems parties thereto, and that the agreement confers upon said Board of Managers the powers set forth in the said agreement, Exhibit A, annexed to the bill of complaint, for the provisions of which agreement this defendant begs leave to refer to the same. And this defendant denies each and every allegation of the bill of complaint imputing to the said agreement, or to the parties thereto any other agreement or intent than such as appears on the face thereof, and denies that the said Board of Managers, or any member thereof, has any power in regard to the subject matter embraced in the said agreement except as is
197 specifically granted to the said Board of Managers and the members thereof by the terms of the said agreement.

And this defendant denies that the said agreement confers upon the Board of Managers any right or authority to establish rates, fares, charges or rules for governing the traffic within the scope of the agreement.

VI.—This defendant further answering, denies that by the said agreement, or otherwise, the said companies, or any or either of them, surrendered to the said association any traffic whatever; or that it was or is the intention of said companies, or any or
198 either of them, or that it is or will be the effect of said agreement, to surrender to said association any traffic whatever.

VII.—This defendant admits that the traffic passing from, to or through the western termini of the trunk lines referred to in the said agreement constitutes a considerable and important part of all the freight and passenger traffic carried on between the several States and Territories of the United States, and between them and adjacent foreign countries, and that prior to the time when the said agreement went into effect the said rail-

road companies and systems, or many of them, 199
were in competition with each other for said traffic; but this defendant denies that such competition as conducted prior to the time when said agreement went into effect, resulted in advantage to the public engaged in such traffic or to the benefit or advantage of the people of the United States. And this defendant denies that said agreement was or is an oppressive or unlawful contract, agreement, combination or conspiracy.

VIII.—This defendant denies that in and by the terms of the said agreement attached to the bill of complaint, "Exhibit A," the said railroad companies, parties thereto, with the purpose of ter- 200
minating all or any competition among themselves for the freight and passenger traffic aforesaid, or for any purpose, unlawfully or otherwise, agreed to surrender the control of such traffic to the Board of Managers created by the terms of the said agreement, or agreed to terminate existing through cooperative or commission freight lines, although this defendant answers and admits that said companies, without any unlawful purpose, but as they were advised and believed and still are advised and believe they lawfully might do, agreed, for reasons of economy, to limit or terminate some or many of the powers or functions of existing through co-operative and commission freight lines, and, 201
except with the approval of the managers, to abandon all agencies for soliciting or contracting for any of the freight or passenger traffic within the scope of the said agreement, and to vest in the said Board of Managers full authority to organize joint freight and passenger agencies, as they might deem desirable; and that each and every of the said companies, in and by the said agreement, as they were advised and believed and still are advised and believe they lawfully might do, agreed not to maintain, directly or indirectly, in respect to the traffic covered by said agreement, any freight or

202 passenger agency except with the approval of the said Board of Managers, and to employ nobody in soliciting or contracting for any of such traffic to whom the said Board of Managers should object; but this defendant denies that the said companies, or any or either of them, in and by the said agreement or otherwise, surrendered to the said Board of Managers full or absolute control over all or any of the said competitive interstate traffic or commerce within the scope of said agreement, and this defendant avers that the sole purpose of the parties to the agreement in inserting the provisions therein contained relative to freight lines and agencies was, so far as they lawfully might, to prevent
203 illegitimate and ruinous competition, and the payment of rebates and commissions and the use of other subterfuges and secret practices which would result in unjust discriminations as between shippers and detriment to the public.

IX.—This defendant denies that in and by the said agreement the said companies, or any of them, unlawfully or in restraint of trade or commerce among the several States, or otherwise, agreed that the said Board of Managers should divide the said competitive traffic among the railroad companies, parties to the said agreement, in such proportions as the said Board of Managers should determine,
204 or that full control of any of the aforesaid competitive traffic was surrendered or entrusted by the terms of said agreement to the said Board of Managers; but this defendant admits that by said agreement it was provided that the Managers should be charged with the duty of securing to each of the companies parties thereto equitable proportions of the competitive traffic covered by said agreement so far as might be legally done; and this defendant denies that the said agreement unlawfully or otherwise combined a large or any part of the freight business of the said several competing railroads or railroad systems, or unlaw-

fully restrained or prevented competition among 205
the said railroads, or any or either of them in respect to any competitive traffic, or unlawfully restrained trade or commerce among the several States and Territories of the United States, or unlawfully or otherwise attempted to monopolize any part of such interstate trade or commerce.

X.—This defendant denies that the several railroad companies or systems, parties to the said agreement, or any or either of them, in or by the said agreement or otherwise, agreed that the Board of Managers created by said agreement and thereby charged with the execution thereof, should have power to establish the rates, fares or charges 206
for carrying such interstate traffic, either freight or passenger.

This defendant admits that the said agreement conferred upon said Board of Managers power to determine, when in their judgment necessary, the divisions of rates, fares and charges between connecting companies, parties to said agreement, and so far as practicable, between companies parties to said agreement and other railroad companies connecting with the parties to said agreement or any of them, keeping in view uniformity and the equities involved.

But this defendant answers and avers that the power conferred upon the said Board of Managers 207
to determine the divisions of rates and fares between the several railroad companies was not a power conferred upon the Board of Managers to fix or determine rates for through traffic over connecting lines, but only to fix and determine the *pro rata* share or division of such established through rates or fares to be apportioned to the several railroad companies owning or operating the connecting railroads constituting such through lines.

And this defendant denies that in or by the said agreement the said companies or any or either of

208 them unlawfully, or in restraint of interstate trade or commerce or otherwise contracted, agreed or combined among themselves for the division between them of a portion of the earnings of the said several railroad companies, parties to the said agreement. And further denies that the said companies or systems, parties to said agreement, or any or either of them, had any purpose to restrain interstate trade or commerce by unlawfully or otherwise pooling or combining any part thereof, for which, prior to the date of the said agreement the said railroads or systems, or any or either of them, were actively or independently competing.

And this defendant further denies that the
209 unrestrained and illegitimate competition for interstate trade and commerce by the several railroad companies and systems which prevailed prior to the first day of January, eighteen hundred and ninety-six, and which in the said bill of complaint is erroneously styled active and independent competition, was to the advantage of the public or the United States in facilities, rates, fares or charges or otherwise.

XI.—This defendant denies that in and by said agreement the railroad companies and systems aforesaid, parties thereto, agreed that any failure to abide by the rates, fares and charges to govern the inter-
210 state traffic and commerce aforesaid, as recommended by the Board of Managers aforesaid, should be deemed a violation of said agreement or articles of organization. But this defendant avers that it was provided by the said agreement that the Managers should from time to time recommend such changes in said rates, fares, charges and rules as might be reasonable and just and necessary for the governing of the traffic covered by the said agreement and for protecting the interests therein of the parties to the said agreement, and that the failure to observe such recommendations by any party to the said agreement as and when made should

be deemed a violation of the said agreement, and 211
that the company or companies committing such violation should be subjected to the fines and penalties, in said agreement mentioned.

But this defendant avers that such provision of said agreement is subject to and is qualified and modified by other provisions of said agreement, under and by virtue of which any railroad company may, so far as concerns itself, by action of its Board of Directors, and upon timely and reasonable notice, disapprove, deviate from and change the rates, fares, charges, and rules so recommended, without subjecting such company to any fine or penalty.

And this defendant denies that there was 212
any oppressive or illegal purpose whatever in agreeing to any of the provisions of the said agreement, or that any of the provisions of the said agreement were unjust, oppressive or unlawful, or that there was inserted in the said agreement any provision, the purpose or intention of which was, or which has the effect, to combine the freight and divide the earnings of the said railroad companies, parties thereto, or any portion thereof, or in any respect to restrain or monopolize trade or commerce among the several States and Territories of the United States.

XII.—This defendant answering the allegations 213
of the bill of complaint as to the right of any company to retire from the association created by said agreement, and as to the duration of the said agreement, begs leave to refer to the provisions of said agreement in that behalf; and this defendant admits that it is provided in the said agreement that the Board of Managers, therein created and charged with the duty of executing the same, should have their principal office in the City of New York, in the Southern District of New York, and that the said Board of Managers has been organized under said agreement, and did at

214 the time of the filing of the bill herein consist of the persons in that behalf mentioned in said bill of complaint; and that the said railroad companies have put into full operation all the provisions of their said agreement and, through the Board of Managers and other officers, hold meetings in the City of New York and Southern District of New York, but denies that such acts, or any of them, are done with any unlawful purpose or in any respect operated to any detriment or disadvantage of the public, or are in violation of any of the laws of the United States.

XIII.—And this defendant further answering,
215 touching the matters and things alleged in the said bill of complaint, says: That the railroad systems of the United States, and in particular those parts of the same which are embraced under the operation of the agreement mentioned in the said bill, had grown into the condition in which they were at the time of the making of the said agreement, by a long and gradual process, in obedience, partly to the necessities of trade and commerce, and partly to the supply of capital and the display of enterprise in furnishing railroad facilities for such trade and commerce; that the great lines of railroad in the United States, and in particular the trunk lines constituting the systems mentioned
216 in said bill of complaint, had been made up of roads originally constructed for comparatively short distances, and afterwards, from time to time lengthened by additions, in some cases constructed by the same corporations by which the first roads were owned and in others by different corporations, and that the same had in like manner, from time to time, been enlarged and extended laterally and otherwise by new roads and extensions of roads, until the whole country had been covered by a network of lines which had, from time to time, by purchase, lease, merger, sale under the foreclosure of mortgages, and other methods of con-

solidation, been united under proprietorships very 217
few in number as compared with those constructing
and controlling the original parts; that the original
and separate roads were built from time to time in
response to the most pressing demands, because the
enterprise was promising and hopeful in point of
expected profit, and that the gradual consolida-
tion through the means above mentioned had been
shaped in accordance with the necessities arising
from the rapid growth of business, the building up
of towns and cities and the concentration of busi-
ness interests in the same; that originally trans-
portation for considerable distances could only be
had by successive dealings with different railroads
under different proprietorships and control, and so 218
required, to the great embarrassment of trade, fre-
quent changes of cars, by reason of difference in rail-
road gauge or refusal to interchange cars on roads of
equal gauges; that this embarrassment had become
aggravated by the circumstance that the tariffs of
rates were different upon different railroads and few,
if any, joint tariffs existed by which transportation
could be rapid, simple and convenient and the cost
thereof certain and known beforehand; that the dif-
ficulties and embarrassments thus encumbering the
trade and commerce of the country could be over-
come only as they had, in fact, been overcome, by the
consolidation of ownerships, or, where this was not
practicable, by conference, agreement and com- 219
munity of arrangement among the numerous inde-
pendent roads; that the trade and commerce of the
country absolutely required such conferences and
the making of mutual and harmonious arrange-
ments between railroads, and that for many years it
had been the practice with all well-conducted rail-
road companies to enter into such mutual arrange-
ments, for the purpose of facilitating their own
operations and accommodating the trade and com-
merce of the country; that without such mutual
arrangements it would have been wholly impossible
to move with efficiency the enormous traffic to

220 which the business of the country had given rise, and that the necessity for such arrangements had been universally acknowledged by all managers of railroad companies, by all shippers and other persons engaged in trade requiring the transportation of merchandise, by State legislatures in requiring railroad companies to make connections with each other and to allow the passage over one road of trains and cars belonging to another, and by the Congress of the United States in the passage of the act commonly known as the Interstate Commerce Act, and that the result of the system which had thus gradually grown up and been established has been such thorough and efficient means of trans-
221 portation by rail that the smallest article of traffic may be transported between points the most remote, on schedules and upon terms and at a cost known accurately in advance by the shipper.

XIV.—This defendant further avers that each of the defendant companies, parties to said agreement, is subject to the provisions of the Act to regulate commerce enacted by Congress for the regulation of the business of interstate transportation by rail; that the leading requirements of the said Act are, that all charges shall be reasonable and just; that all unjust discrimination shall be prohibited, and that no undue or unreasonable
222 preference or advantages shall be given; that in connection with the aforesaid provisions, and in aid of the enforcement thereof, all common carriers subject to said Act are thereby required to establish and print schedules showing the rates, fares and charges in force at any time for the transportation of persons and property, together with the classification of freight, and any rules or regulations which in anywise change, affect or determine any part of the aggregate of such rates, fares and charges; that the carriers are required to file these schedules with the Interstate Commerce Commission and to post copies thereof in their stations;

that the carriers are prohibited from changing such 223
schedules, except after ten days' like filing and posting in case of advances, and after three days' like filing and posting in case of reductions, and are also prohibited, under heavy penalties, from charging, demanding, collecting or receiving from any person or persons a greater or less compensation for the transportation of persons or property than is specified by the schedule in force at the time, to the end that no unjust discrimination, in the form of special rates, rebates, drawbacks or otherwise, shall be effected in favor of any shipper; that like provisions are also made in respect to joint traffic which passes over the line of more than one railroad in the course of its transportation, and 224
said Act also requires that reasonable, proper and equal facilities shall be afforded for the interchange of such joint traffic. That the defendant companies, by said Act, are also required to so establish said rates, rules, regulations and classifications of freight that no person, company, firm, corporation, locality or description of traffic shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; that said requirements involve not only the determination in advance of what is a just and reasonable rate upon every article of traffic from every point to every other point over the lines of each individual carrier, and over all joint lines, but also the establish- 225
ment of a vast number of rules and regulations affecting the transportation of freight, which are necessary to prevent discrimination and favoritism among shippers, together with the classification which shall be employed in freight traffic, all of which must be done in such manner that no person, locality or description of traffic shall be subjected to prejudice or disadvantage in any respect whatsoever.

And this defendant avers that concerted action between the carriers is indispensable in order to comply with the aforesaid and other provisions of

226 the interstate commerce law; that the fixing of joint rates, and of a classification of freight for general use, is obviously a matter requiring mutual agreement, and the establishment of every joint rate also involves the fixing of divisions thereof; that for the establishment of tariffs to and from common points a preliminary agreement between the lines in interest is equally necessary, for the reason that unless tariffs for traffic common to two or more lines are equivalent, the business will all flow to the lines naming the lower rates, and other lines will be compelled at once to make reductions in their tariffs, a process which, if pursued, will speedily reduce the rates below a just and reason-
227 able compensation, and will lead to bankruptcies, involving either the extinction of routes or their absorption by competing routes; that the prohibition of preferences and advantages between localities, and in respect to particular descriptions of traffic, necessarily involves a preliminary establishment of the relations proper to be maintained; that such preferences and advantages are equally disastrous and illegitimate when they exist between the tariffs of two or three different carriers as when they appear upon the tariffs of a single carrier; that the Interstate Commerce Act absolutely requires that rates shall be fairly adjusted between localities, and between points of
228 production and consumption of all articles, many of which points are far removed from each other, and are situated upon different railroad lines; and that in the last-mentioned matter, which comprises a great part of the work of the Joint Traffic Association, the several carriers necessarily reflect the interest of shippers upon their respective lines, each official seeking to stimulate and increase the traffic of his own road.

XV.—And this defendant, further answering, avers that it has been a matter of official report by the Interstate Commerce Commission, and this de-

fendant is informed, and believes and avers, that for 229
several years prior to the 19th day of November, 1895, such part of commerce between the States and between the States and foreign countries as consisted of railroad transportation was in a demoralized condition, due in a very large measure to illegitimate competition; that such competition resulted on many lines in the cutting of rates, the giving of rebates and other secret advantages to shippers and numerous unfair practices in order to secure business; that traffic was by such lines often accepted at unremunerative prices in order to keep the railroads employed; that the object sought to be attained by the competing parties was not the benefit of the public or the earning of revenue so as to give 230
to the investor a reasonable and just rate of interest upon his investment, but to swell the volume of tonnage and the number of passengers carried upon individual roads without substantial increase of the volume of traffic upon the roads collectively, and without regard to the cost or the income produced; that such conditions resulted on some lines in great and useless damage to the way, bridges and superstructure of the railroads and great wear and tear to the rolling stock and other equipment consequent upon the carriage of an excessive volume of traffic at unremunerative rates, and the inability and failure to properly maintain the road and appurtenances and rolling stock and equipment; that 231
in consequence of this desire on the part of such railroad companies to obtain business large numbers of persons were employed as soliciting and contracting agents and in through co-operative and commission freight lines, the services of many of whom could with due regard to economy be dispensed with and most of whom in many cases would not have been employed, except as means of self-defense against the action of other companies suspected of illegitimate practices—all the above improper practices tending to, and sometimes resulting in, non-payment of divi-

232 dends, default of interest upon the bonds of railway companies, decrease of earnings, and deterioration and partial destruction of railway properties, impairment of the efficiency and safety of the public service, and great injury to the people of the United States.

And this defendant denies that the true interests of the general public in the operation of the railroads consists in obtaining rates and fares that are unreasonably low or unremunerative to the companies; and it insists, on the contrary, that the duty of the companies cannot be performed with due regard to the public interests upon any such terms, nor as this defendant is advised and believes, can
233 it long be so transacted at all.

And this defendant further avers that a demoralized condition of the business of railroad transportation, such as above described, must always result in rate wars and sudden and violent fluctuations in rates; and that great injury has been caused to the public as a result of the failure or inability of the companies engaged in interstate commerce to maintain reasonable and proper rates, fixed by general acquiescence in the fact of their reasonableness and propriety; that uniformity and stability in the rates of transportation are advantageous to the public, while the cutting of rates below what is reasonable and proper must always result in crip-
234 pling the companies engaged in transportation, in depriving them of the ability to transport reasonably and properly, and in such uncertainty on the part of shippers as must interfere with the safe and proper transaction of their business.

XVI.—And this defendant further answering says that the maintenance of soliciting or contracting passenger and freight agencies such as above mentioned and intended to be abolished by the said agreement, involved an annual expenditure approximating four millions of dollars, and that the suppression or abandonment of many of such agencies

will secure economy of administration and an advantageous result both to the companies and the shippers; that because of the remoteness of these agencies from the general offices of the companies, and the fact of their individual contact with shippers when dealing directly with them in reference to rates, it has become difficult to confine them in every instance to an observance of the provisions of the Act to regulate Commerce and other laws and regulations or to the instructions of the officers of the companies; and it was believed that the discontinuance of them in a large part and making the remainder subordinate to the Managers of the Traffic Association would, and this defendant avers that the same does, tend to an enforcement of the provisions of the said Act to regulate Commerce, and in no wise violates the provisions of that or any other law. 235 236

This defendant says that the purpose of the parties to the said agreement in inserting the provisions therein contained relating to freight lines and agencies was to prevent, so far as possible, the payment of commissions and the use of other subterfuges, secret practices and methods resulting in the past in unjust discriminations between shippers and in great detriment to the public.

XVII.—And this defendant further answering says that in the course of the growth of the various railroad systems hereinbefore mentioned, and as a result thereof, it had become apparent that certain of the competitive lines had indisputable advantages over others, either by reason of being shorter or superior in point of grade, or other particulars, and that the necessary tendency of such condition is that the superior lines should at equal rates attract the main body of the traffic; but that in railroad competition, unlike that prevailing in other branches of business, a company which may be unable to do business at a given rate must lower its rates, even though thereby it may be compelled to do its busi- 237

238 ness for less than the cost thereof, and that the result of such competition is to insure, if long continued, the bankruptcy and ruin of the weaker road, and either its destruction as a means of transportation or its absorption by its more powerful rivals, and the consequent extinguishment of competition to that extent.

And this defendant further says that the continuance of all the routes embraced by the systems mentioned in said bill of complaint is a great public advantage, inasmuch as there are periods in every year in which the pressure of traffic is so great as to bring into requisition all the facilities of all the lines, and that great and incalculable public injury would result from the extinction of any such facilities, and that such injury would be fatal not only
239 to those interests which embrace through traffic, but also all the local interests along the lines of such weaker routes.

And this defendant says that it has for many years past been found necessary in order to sustain such weaker routes and enable them to continue in operation and to perform their useful functions, that the disadvantages under which they labor should, in some measure, be recognized by voluntary concessions made by stronger roads for the purpose of securing to them a fair share of such through traffic as might not have been destined by the shippers
240 thereof for some particular route, and that the effect of such concessions has been salutary and for the interest not only of such weaker roads, but of the public at large.

XVIII.—And this defendant further answering says that the necessary demands of the trade and commerce of the country in connection with its system of railway transportation, hereinbefore mentioned, which can be satisfied only by concert of action between the various independent lines, and which have, in a certain measure, heretofore been accomplished by conference and agreement, have

not been fully and satisfactorily accomplished; and 241
that the object and purpose of the said agreement and of the various railroad companies, defendants herein, in entering into the same were to more fully and completely satisfy the requirements of the trade and commerce of the country in respect to railway transportation, and to check and remove, so far as possible, the disadvantages and mischiefs which would inevitably arise from the want of necessary concert of action and from illegitimate and ruinous competition.

That to this end the parties to said agreement reaffirmed the rates, fares, and charges and the rules applicable thereto which were in force and were authorized by the said companies, in respect to the 242
traffic covered by said agreement, at and prior to the making thereof. That said rates, fares, charges and rules were, and had been established by each corporation because they were reasonable, just and necessary, and schedules thereof had been duly filed with the Interstate Commerce Commission; and by said agreement the said companies provided a method by which the same could from time to to time be modified with due regard to the interests of all concerned; that power was, therefore, by the said agreement given to the Managers therein mentioned to recommend such changes in the said rates, fares, charges and rules as might be reasonable and just and necessary for governing the traffic covered 243
by the agreement and for protecting the interests of the parties to the said agreement therein, and that it was in and by the said agreement provided that any one of the companies, parties to said agreement, might, pursuant to the terms thereof by the action of its Board of Directors, disapprove of such recommendation, and that such disapproval should become effective thirty days after the receipt of such resolution of disapproval by the Board of Managers, and the powers of the said Board of Managers were in and by the said agreement expressly made subject to the provisions of the laws of the

United States; and the said agreement expressly provided that the powers conferred upon the Managers should be so construed and exercised as not to permit violation of the Interstate Commerce Act or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties thereto, and that the Board of Managers should co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges and rules established thereunder.

And this defendant further says that the powers granted in and by the said agreement to the Board of Managers in respect to recommending changes in rates, fares, charges and rules, and the provisions of the said agreement relating to action to be taken upon such recommendation, were intended to promote the establishment of rates, fares, charges and rules which should be reasonable and just both to the transportation companies and shippers and passengers using the lines embraced within the scope of the said agreement, and this defendant believes and avers that such powers and provisions will promote the accomplishment of such purpose and intention by affording opportunity for the due consideration of the reasonableness of any proposed rate, fare, charge or rule by all the lines interested and an interchange of views on the effect of the change recommended by the Board of Managers and at the same time, by checking strife and preventing illegitimate competition and sudden and selfish action, avert financial ruin to one or more of the competing companies and yet preserve to the public adequate facilities at fixed and reasonable prices and under stable and reasonable regulations.

And this defendant avers that a further practical effect of the provisions of said agreement relating to the power of said managers to recommend changes in said rates, fares, charges and rules is that in case, as is usual, any proposition

concerning the same shall involve discrimination 247
or prejudice to other points or on other lines, unless corresponding changes are elsewhere made, an opportunity is afforded, under the said agreement, for the reduction of rates, and for changes in rules and regulations, in such a way and manner as will maintain the due relations of rates, each with all others, and will prevent undue preference and advantage between individuals and between cities and towns, by making the reductions and changes, subject to the action of the respective boards of directors, effective over all lines at the same time.

And this defendant further avers that one of the practically injurious results to localities, of the conditions existing before and at the time of entering into the said agreement, arose from the fact 248
that frequently two communities, or different parts of the same community, in a large sense interdependent, were each only accessible by a single line of railroad different from, and independent of, that serving the other; that unequal rates resulted, and great prejudice was caused to the locality served only by the independent line charging the higher rate or furnishing inferior facilities; that uniformity of rates and equality of facilities as between such independent lines were only attainable by such harmony of action as results from the existence of an association of the character established by the said agreement, and that the tendency and effect of said agreement is to carry out 249
and effectuate the purposes, in this regard, of the Act to regulate commerce.

And this defendant, further answering, avers that since the execution of the said agreement all the schedules aforesaid of rates, fares and charges and the rules applicable thereto, have been filed with the Managers of said Joint Traffic Association as provided in said agreement, and that the said rates, fares and charges and the rules applicable thereto are in all respects just and reasonable, have in no respects been disapproved by the said Interstate

250 Commerce Commission, and have been in all respects maintained and kept in force and effect, except that in some instances reductions of rates, fares and charges have been recommended by the said Managers of the Joint Traffic Association, and have been observed by the defendant corporations interested therein; but such reductions have been made not because the former rates were unreasonable or excessive, but for the purpose of avoiding or correcting discriminations, and securing uniformity of rates, or accommodating the changing necessities of business.

XIX.—And this defendant, further answering,
251 avers that the purpose and intention of the several railroad companies, parties to the said agreement, is honestly and fairly set forth in the body of said agreement, wherein it is provided, among other things, that the powers conferred upon the Managers of the said Joint Traffic Association shall be so construed and exercised as not to permit violation of the Interstate Commerce Act, or of any other law applicable to the premises, or any of the provisions of the charters or the laws of the companies, parties thereto, and that the Managers shall co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares and charges established under the said arti-
252 cles, and also in the preamble thereof wherein it is declared that the purposes of the said agreement are to aid in fulfilling the purposes of the Interstate Commerce Act, to co-operate with each other and adjacent transportation associations, to establish and maintain reasonable and just rates, fares, rules and regulations on State and Interstate traffic, to prevent unjust discrimination and to secure the reduction and concentration of agencies and the introduction of economies in the conduct of the freight and passenger service. And further avers that it is the purpose and intention of the said Joint Traffic Association and its Board of

Control and of its Board of Managers and its several officers and of the several railroad companies, parties to the said agreement, fully, fairly and honestly to carry out the purposes stated in the said agreement, and that the said association, its boards and officers, and each and all of the said railroad companies, parties to the said agreement, have no other or different purpose or intention than in the said agreement and in this answer are set forth. 253

And this defendant denies the existence of any purpose, contract, agreement, contrivance, combination or conspiracy, in connection with the formation of the said Joint Traffic Association, or otherwise, to unjustly or oppressively increase or augment the rates or fares charged for the transportation of interstate traffic, or to counteract the effect of free competition on the facilities or prices of transportation or to establish or maintain arbitrary or unreasonable rates or to prevent any one of the railroad companies, parties to the said agreement, from reducing rates, and it denies that by the formation of the said Joint Traffic Association the rates or prices for transporting traffic on any of the lines of the companies parties to the said agreement have been, or will be, unjustly, unreasonably or oppressively, increased or augmented; and it further denies the existence in connection with the formation of the said Joint Traffic Association, or otherwise, of any intention to monopolize trade, traffic or commerce among or between the States, Territories or foreign countries in the bill of complaint mentioned and referred to, or that by reason of the formation of the said Joint Traffic Association or otherwise, such trade, traffic or commerce has been in fact or can or will be monopolized. 254 255

And this defendant says that while there is no requirement of law which establishes or requires free competition in the business of transportation, it was and is the intention of each of the companies parties to the said agreement to obtain for

256 itself all of said trade, traffic and commerce possible as against all other of such companies and all outside lines.

XX.—This defendant further says that while the lines enumerated in the said agreement and in the bill of complaint as being within the purview of the said agreement are lines of transportation and communication used for interstate commerce, they are not the only lines used or capable of being used within the same transportation territory for such traffic, but that there are several other lines which can be and are used for such traffic, and over which a large amount of such traffic has been transported
257 since the said agreement went into effect.

This defendant, further answering, says that the same separate, distinctive and competitive lines of transportation and communication extending among and between the States of the United States continue to exist as before the making of the said agreement of the 19th of November, 1895.

XXI.—And this defendant further avers that the several railroad companies, parties to the said agreement, intend to continue to be engaged independently in transportation among the States and Territories of the United States and with foreign nations, and to continue in active competition with
258 each other for traffic both in freight and passengers, and to furnish to all persons engaged in such traffic or travel among the several States and Territories of the United States separate and independent and competitive lines of transportation in respect to the traffic mentioned in the bill of complaint, and further intend that all charges made for any service rendered or to be rendered in the transportation of passengers or property among the States and Territories of the United States and with foreign countries, or in connection therewith, shall be reasonable and just, and that no unjust or unreasonable or unlawful charge for such service

shall be exacted ; and that it is not the purpose or 259
intention of any of the railroad companies, parties to the said agreement, directly or indirectly, either by themselves or through any board or officer of the Joint Traffic Association, or otherwise, by any special rate, rebate, drawback, or other device, to charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of the Interstate Commerce Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially 260
similar circumstances and conditions ; and that no undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, shall be made or given, or any particular description of traffic be subjected to any undue or unreasonable preference or disadvantage in any respect whatsoever, and that each and every carrier, party to the said agreement, shall and will, according to their and each of their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from 261
their several lines and those connecting therewith, and shall not discriminate in their rates or charges between such connecting lines, and that it is the intention of the railroad companies, parties to the said agreement, and each of them, not to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, except by authority of the Interstate Commerce Commission, and that it is not the pur-

262 pose or intention of any or either of the railroad companies, parties to the said agreement, to pool freights of different and competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion of them.

XXII.—And this defendant further says that the said agreement of the 19th of November, 1895, was duly filed with the Interstate Commerce Commission, as required by law.

And this defendant further answers that there is nothing in the said agreement contained, nor was it intended that there should be anything in its opera-
263 tion or effect, which will in any manner interfere with or tend to prevent the full performance by the companies parties thereto, respectively of all duties, imposed upon them or any of them by law, or the rendering of any service to the public which is or may be lawfully required of them or any or either of them in regard to the traffic covered by the said agreement.

XXIII.—And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on or about the 26th day of December, 1896, Wil-
264 liam R. Morrison, the Chairman of the Interstate Commerce Commission, addressed and delivered to the Attorney-General of the United States a certain communication of which the following is a copy:

"INTERSTATE COMMERCE COMMISSION,
WASHINGTON, December 26, 1895.

Hon. JUDSON HARMON,
Attorney-General.

Dear Sir:

We have the honor to enclose herewith a copy of a contract, agreement, or arrangement entitled "Articles of Organization of the Joint Traffic

Association," entered into between certain common 265
carriers, corporations, named therein, forming said Joint Traffic Association, which is to take effect January 1st, 1896, and was filed with the Commission December 24, 1895. This contract, agreement, or arrangement is, we believe, in conflict with the Act to regulate commerce and cannot be carried into effect without violating the provisions of said Act.

Complying with the requirements of Section 12 of said Act, we have the honor to request that you will direct the U. S. District Attorney for the Southern District of New York or other proper jurisdiction to institute in the proper Court and prosecute under your direction all necessary proceedings, by 266
injunction or otherwise, to prevent the carrying into effect of said contract, agreement or arrangement as contemplated and provided for by said Articles of Organization, and for the punishment of all violations of said Act as the result of the formation of said Joint Traffic Association.

Respectfully,

WM. R. MORRISON,
Chairman.

But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant 267
does not know, and has not been informed, save by the allegations of the said amendment to said bill.

And this defendant further answering, says that the railroad companies, parties to the said agreement, are common carriers, engaged in transporting persons and property among the several States and Territories of the United States, and as such common carriers are subject to the provisions of the Act of Congress, approved February 4, 1887, entited "An Act to regulate Commerce," with the various amendments and supplements thereto, and

268 that the said act and amendments and supplements thereto constitute a full, adequate and comprehensive system of regulation and the sole system of regulation which has been established by Congress for railroad companies as common carriers subject to said Act; and this defendant is informed and believes, and avers that no request has been made by the said Interstate Commerce Commission, created by said Act of Congress, to the District Attorney of the United States for the Southern District of New York, to institute or prosecute under the direction of the Attorney-General of the United States, this or any proceedings against this defendant, under the said Act of
269 Congress, approved February 4, 1887, entitled "An Act to regulate Commerce," and the several acts amendatory thereof and supplementary thereto, unless the said letter, a copy whereof is hereinabove set forth, be such a request, which this defendant is advised it is not, and this defendant will claim and insist upon the same benefit and advantage of such objection and omission as fully and completely as if this defendant had demurred to the said bill of complaint.

XXIV.—And this defendant further answering says that the railroad companies, parties to the said agreement, are not nor is either of them, nor is the
270 Joint Traffic Association, nor are its Boards or officers, or any or either of them, subject to the provisions of the Act of Congress entitled, "An Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," approved July 2, 1890, and that the last mentioned act was not an amendment or modification of The Act to regulate Commerce, approved February 4, 1887, and does not relate to the business of common carriers, but has application solely to so-called trusts, industrial combinations and attempted monopolies, undertaken by persons or corporations engaged in trade, as manufacturers, miners, dealers in pro-

ducts, either in raw or manufactured state or otherwise, who carry on the actual transactions which constitute trade or commerce as distinguished from railway corporations, which are engaged in the business of transportation, and that the said agreement of November 19, 1895, does not relate to or affect any trade or commerce within the purview of the said Act, and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 271

XXV.—This defendant is advised and believes and insists that the complainant cannot in one and the same suit claim the relief prayed in said bill of complaint upon the ground that the said agreement is in violation of the said "Act to regulate Commerce," and may be restrained on the request of the Interstate Commerce Commission, and also upon the ground that the said agreement is in violation of the "Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," and may be restrained on the demand of the Attorney-General, and also upon the general allegation that the said agreement is contrary to law and in violation of the rights of the citizens of the United States, and may be restrained without request or demand of any specified officer of the United States; that said alleged grounds of relief are distinct and separate, and cannot be united in the same suit; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 272 273

XXVI.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit or to any relief therein upon mere general allegations, such as contained in said bill, that the said agreement is unlawful, or without spe-

274 cifically alleging that it is in violation of some statute of the United States, and specifying the particular statute, and the particulars in which the said agreement is claimed to be in violation thereof; and this defendant will claim and insist upon the same benefit and advantage of this objection as fully and completely as if this defendant had demurred to the said bill of complaint.

XXVII.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit, or to any relief therein, upon any allegation that the said agreement is in violation of
275 the rights of the citizens of the United States; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to said bill of complaint.

And this defendant denies all and all manner of unlawful combination and conspiracy and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied is true to the knowledge or belief of this
276 defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct, and prays to be dismissed hence.

THE JOINT TRAFFIC ASSOCIATION,

By G. R. BLANCHARD,
Commissioner.

CARTER & LEDYARD,
Solicitors of the above-named Defendant.

JAMES C. CARTER,
LEWIS CASS LEDYARD, } Of Counsel.

STATE OF NEW YORK, } ss. 277
County of New York, }

GEORGE R. BLANCHARD, being duly sworn, on his oath, saith that he is the Commissioner of The Joint Traffic Association, the above-named defendant; that he has read the foregoing answer and knows its contents; that the same is true to the best of his knowledge, information and belief.

G. R. BLANCHARD.

Sworn to before me this 23rd }
day of March, 1896. }

[SEAL.] WALTER T. TAYLOR,
Notary Public,
New York County. 278

(Endorsed):—Circuit Court of the United States for the Southern District of New York. In Equity. The United States of America, Complainant, vs. The Joint Traffic Association, et al., Defendants.—Answer of Defendant, The Joint Traffic Association.—Carter & Ledyard, Solicitors for above-named Defendant.—U. S. Circuit Court, Filed Mar. 23, 1896.—John A. Shields, Clerk.

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280 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, et al.

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It is hereby stipulated that the answer of The Joint Traffic Association, one of the defendants in the above-entitled cause, be amended as follows:

1. By striking out the first paragraph of Article XXIII. of the answer, and substituting in lieu thereof the following:

"And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on the 26th day of December, 1895, the Interstate Commerce Commission made and entered on its records
282 an order in substantially the following words:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of December, A. D. 1895.

The Commission having under consideration the Articles of Organization of the Joint Traffic Association, it was

Ordered, that the following communication, enclosing copy of said Articles of Organization, be sent to the Attorney-General of the United States":

2. By striking out at the end of the communication above referred to, the words: 283

"But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant does not know, and has not been informed, save by the allegations of the said amendment to said bill."

And inserting in lieu thereof the following:

"And this defendant is informed and believes that the chairman of said Interstate Commerce Commission did accordingly, on the same day, send to the Attorney-General of the United States the letter last above set forth, and that the Attorney-General received the same. 284

"And this defendant is informed and believes that thereafter, and prior to the commencement of this suit, the said Attorney-General did direct the United States Attorney for the Southern District of New York to institute all necessary proceedings to prevent the parties to said agreement from carrying the same into effect, and to have the agreement declared null and void, both on the alleged ground that said agreement appeared to be in violation of the provisions of said Act to Regulate Commerce, as amended, and also in violation of the Act of July 2, 1890, entitled; 'An Act to protect Trade and Commerce against unlawful Restraints and Monopolies,' and on all other grounds, if any, by 285 reason of which the said agreement was contrary to law or in violation of the rights of the citizens of the United States.

But this defendant denies that the said Interstate Commerce Commission ever took any other action in the premises, or ever gave the defendants herein, or any of them, any notice of any such supposed investigation or order or report, or any opportunity to be heard in respect to the matter, or any part thereof, stated in the bill of complaint in this cause.

286 And this defendant denies that said Interstate Commerce Commission ever made any order or report, as required by law, requiring the defendants herein, or any of them, to desist from putting the said agreement in operation, or from doing any or either of the things provided for in said agreement.

And it further denies that either the proceedings had and taken by said Interstate Commerce Commission, as herein admitted, or any direction given pursuant thereto, were or are legally sufficient to warrant the institution, maintenance or prosecution of this suit."

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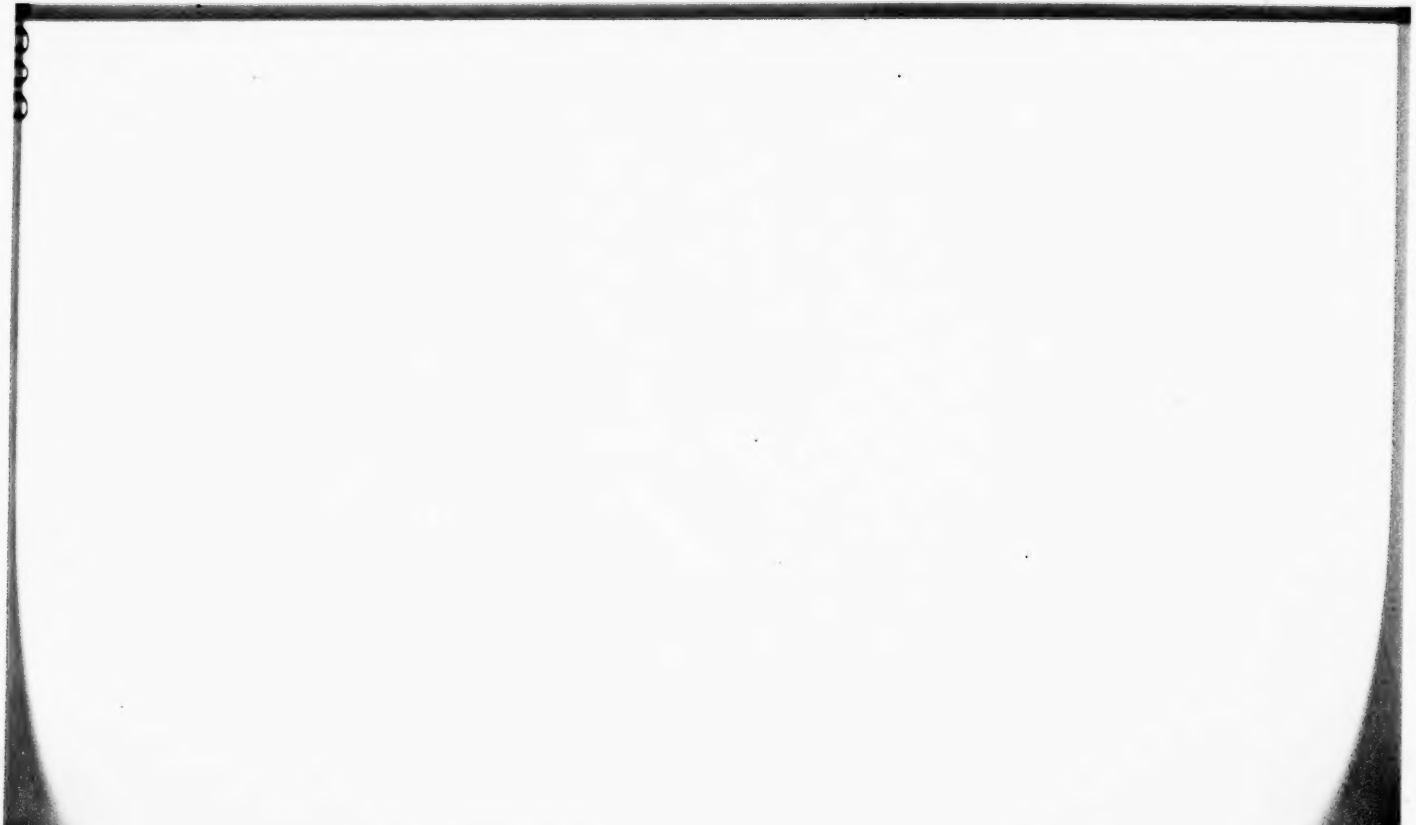

292 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY
293 COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY;
294 THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

Defendants.

ANSWER OF DEFENDANT.

The New York Central & Hudson River Railroad Company.

The answer of THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, one of the defendants in the above-entitled suit to the bill of complaint of the United States of America, complainant therein.

This defendant, now and at all times hereafter 295
saving and reserving to itself all and all manner of benefit, exception or advantages which can or may be had or taken to the many errors, uncertainties, insufficiencies or other imperfections, in the said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are necessary or material for it to make answer to, answering says:

I. That it admits:

That the several railroad companies, defendants herein, are incorporated as in said bill of complaint alleged.

That The Joint Traffic Association is a voluntary 296
association organized under certain "Articles of Organization," entered into and executed by the said several railroad and railway companies, on or about the nineteenth day of November, 1895, a copy of which is annexed to the said bill of complaint as Exhibit A, and that the principal place of business of said Joint Traffic Association is in the City of New York, in the Southern District of New York; but this defendant avers that the said Joint Traffic Association is not incorporated, is not a common carrier and is not engaged in the transportation of freight or passengers.

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II.—This defendant further admits that all of said corporations defendant are common carriers and as such, at all the days and times mentioned in the bill of complaint and prior thereto, were and now are engaged in the transportation of freight and passengers, either separately or in connection with each other, continuously carried on among the several States of the United States, and among and between the several States of the United States and the Territories thereof, and between such States and Territories and foreign countries, and from places in the United States through foreign countries to other places in the United States.

298 But this defendant denies that any or either of said corporations have ever been otherwise engaged in interstate commerce, or that they, or any or either of them, have ever been engaged in any trade in or in relation to any article or commodity in anywise embraced within the operation or scope of said agreement.

III.—This defendant further admits that prior to the 19th day of November, 1895, the several railroad companies constituting what are termed in said agreement respectively the Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh Valley, the
299 Pennsylvania, the Vanderbilt and the Wabash systems, with their leased, controlled, or operated lines, owned, operated and controlled separate railroad lines or systems, engaged with their connections independently in commerce among the States and Territories of the United States and with foreign nations and were in active competition with each other for such traffic, both in freight and passengers, and furnished to all persons engaged in such traffic or travel among the States and Territories of the United States separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned; and this defendant avers that ever since the said 19th day of
300 November, 1895, the said railroad companies have continued to own, operate and control the same separate railroad lines or systems, engaged with their connections independently in said commerce, and that they have ever since continued to be and still are in active competition with each other for such traffic, and have ever since furnished and still continue to furnish to all persons engaged in such traffic or travel the same separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned.

IV.—This defendant further admits and answers 301
that on or about the 19th day of November, 1895, the said railroad companies entered, as they were and are advised and believe they had a lawful right to do, into the certain contract, in the form of a written document, entitled "Articles of Organization of the Joint Traffic Association" hereinbefore mentioned.

But this defendant denies that the said contract is an unlawful contract in any of its provisions, or that it is or was intended to be a contract, agreement, combination or conspiracy to restrain trade or commerce among the several States, or was or is an attempt to monopolize, or does or will operate to monopolize, such trade or commerce, or is or was 302
intended to restrain or prevent legitimate competition among such railroads in respect to any inter-state trade or commerce, or does in any way restrain or prevent legitimate competition among said railroads in respect to any of such trade or commerce, or that the said companies or any or either of them in entering into said contract or at any time contrived or intended, or now intend to deprive the public, or have deprived the public engaged in any inter-state trade or transportation of any facilities or advantages which the said public theretofore had lawfully enjoyed from any independent competition of said railroads, or any or either of them, in respect to the traffic described in the bill of 303
complaint, or that the said companies, or any or either of them, at any time intended or now intend to establish or maintain rates of freight or passenger transportation fixed arbitrarily or uninfluenced by competition in respect to any traffic whatever; or that the effect of the said agreement is to establish or maintain rates of freight or passenger transportation fixed arbitrarily, or uninfluenced by competition in respect to any traffic whatever.

V.—This defendant admits that the said agreement establishes a Board of Managers consisting

304 of representatives of a number of the railroad companies or systems parties thereto, and that the agreement confers upon said Board of Managers the powers set forth in the said agreement, Exhibit A, annexed to the bill of complaint, for the provisions of which agreement this defendant begs leave to refer to the same. And this defendant denies each and every allegation of the bill of complaint imputing to the said agreement, or to the parties thereto any other agreement or intent than such as appears on the face thereof, and denies that the said Board of Managers, or any member thereof, has any power in regard to the subject matter embraced in the said agreement except as is
305 specifically granted to the said Board of Managers and the members thereof by the terms of the said agreement.

And this defendant denies that the said agreement confers upon the Board of Managers any right or authority to establish rates, fares, charges or rules for governing the traffic within the scope of the agreement.

VI.—This defendant further answering, denies that by the said agreement, or otherwise, the said companies, or any or either of them, surrendered to the said association any traffic whatever; or that it was or is the intention of said companies, or any or
306 either of them, or that it is or will be the effect of said agreement, to surrender to said association any traffic whatever.

VII.—This defendant admits that the traffic passing from, to or through the western termini of the trunk lines referred to in the said agreement constitutes a considerable and important part of all the freight and passenger traffic carried on between the several States and Territories of the United States, and between them and adjacent foreign countries, and that prior to the time when the said agreement went into effect the said rail-

road companies and systems, or many of them, were in competition with each other for said traffic; but this defendant denies that such competition as conducted prior to the time when said agreement went into effect, resulted in advantage to the public engaged in such traffic or to the benefit or advantage of the people of the United States. And this defendant denies that said agreement was or is an oppressive or unlawful contract, agreement, combination or conspiracy. 307.

VIII.—This defendant denies that in and by the terms of the said agreement attached to the bill of complaint, "Exhibit A," the said railroad companies, parties thereto, with the purpose of terminating all or any competition among themselves for the freight and passenger traffic aforesaid, or for any purpose, unlawfully or otherwise, agreed to surrender the control of such traffic to the Board of Managers created by the terms of the said agreement, or agreed to terminate existing through co-operative or commission freight lines, although this defendant answers and admits that said companies, without any unlawful purpose, but as they were advised and believed and still are advised and believe they lawfully might do, agreed, for reasons of economy, to limit or terminate some or many of the powers or functions of existing through co-operative and commission freight lines, and, except with the approval of the managers, to abandon all agencies for soliciting or contracting for any of the freight or passenger traffic within the scope of the said agreement, and to vest in the said Board of Managers full authority to organize joint freight and passenger agencies, as they might deem desirable; and that each and every of the said companies, in and by the said agreement, as they were advised and believed and still are advised and believe they lawfully might do, agreed not to maintain, directly or indirectly, in respect to the traffic covered by said agreement, any freight or 308 309

310 passenger agency except with the approval of the said Board of Managers, and to employ nobody in soliciting or contracting for any of such traffic to whom the said Board of Managers should object; but this defendant denies that the said companies, or any or either of them, in and by the said agreement or otherwise, surrendered to the said Board of Managers full or absolute control over all or any of the said competitive interstate traffic or commerce within the scope of said agreement, and this defendant avers that the sole purpose of the parties to the agreement in inserting the provisions therein contained relative to freight lines and agencies was, so far as they lawfully might, to prevent
311 illegitimate and ruinous competition, and the payment of rebates and commissions and the use of other subterfuges and secret practices which would result in unjust discriminations as between shippers and detriment to the public.

IX.—This defendant denies that in and by the said agreement the said companies, or any of them, unlawfully or in restraint of trade or commerce among the several States, or otherwise, agreed that the said Board of Managers should divide the said competitive traffic among the railroad companies, parties to the said agreement, in such proportions as the said Board of Managers should determine,
312 or that full control of any of the aforesaid competitive traffic was surrendered or entrusted by the terms of said agreement to the said Board of Managers; but this defendant admits that by said agreement it was provided that the Managers should be charged with the duty of securing to each of the companies parties thereto equitable proportions of the competitive traffic covered by said agreement so far as might be legally done; and this defendant denies that the said agreement unlawfully or otherwise combined a large or any part of the freight business of the said several competing railroads or railroad systems, or unlaw-

fully restrained or prevented competition among 313
the said railroads, or any or either of them in respect to any competitive traffic, or unlawfully restrained trade or commerce among the several States and Territories of the United States, or unlawfully or otherwise attempted to monopolize any part of such interstate trade or commerce.

X.—This defendant denies that the several railroad companies or systems, parties to the said agreement, or any or either of them, in or by the said agreement or otherwise, agreed that the Board of Managers created by said agreement and thereby charged with the execution thereof, should have power to establish the rates, fares or charges 314
for carrying such interstate traffic, either freight or passenger.

This defendant admits that the said agreement conferred upon said Board of Managers power to determine, when in their judgment necessary, the divisions of rates, fares and charges between connecting companies, parties to said agreement, and so far as practicable, between companies parties to said agreement and other railroad companies connecting with the parties to said agreement or any of them, keeping in view uniformity and the equities involved.

But this defendant answers and avers that the power conferred upon the said Board of Managers 315
to determine the divisions of rates and fares between the several railroad companies was not a power conferred upon the Board of Managers to fix or determine rates for through traffic over connecting lines, but only to fix and determine the *pro rata* share or division of such established through rates or fares to be apportioned to the several railroad companies owning or operating the connecting railroads constituting such through lines.

And this defendant denies that in or by the said agreement the said companies or any or either of

316 them unlawfully, or in restraint of interstate trade or commerce or otherwise contracted, agreed or combined among themselves for the division between them of a portion of the earnings of the said several railroad companies, parties to the said agreement. And further denies that the said companies or systems, parties to said agreement, or any or either of them, had any purpose to restrain interstate trade or commerce by unlawfully or otherwise pooling or combining any part thereof, for which, prior to the date of the said agreement the said railroads or systems, or any or either of them, were actively or independently competing.

And this defendant further denies that the
317 unrestrained and illegitimate competition for interstate trade and commerce by the several railroad companies and systems which prevailed prior to the first day of January, eighteen hundred and ninety-six, and which in the said bill of complaint is erroneously styled active and independent competition, was to the advantage of the public or the United States in facilities, rates, fares or charges or otherwise.

XI.—This defendant denies that in and by said agreement the railroad companies and systems aforesaid, parties thereto, agreed that any failure to abide by the rates, fares and charges to govern the inter-
318 state traffic and commerce aforesaid, as recommended by the Board of Managers aforesaid, should be deemed a violation of said agreement or articles of organization. But this defendant avers that it was provided by the said agreement that the Managers should from time to time recommend such changes in said rates, fares, charges and rules as might be reasonable and just and necessary for the governing of the traffic covered by the said agreement and for protecting the interests therein of the parties to the said agreement, and that the failure to observe such recommendations by any party to the said agreement as and when made should

be deemed a violation of the said agreement, and 319
that the company or companies committing such violation should be subjected to the fines and penalties, in said agreement mentioned.

But this defendant avers that such provision of said agreement is subject to and is qualified and modified by other provisions of said agreement, under and by virtue of which any railroad company may, so far as concerns itself, by action of its Board of Directors, and upon timely and reasonable notice, disapprove, deviate from and change the rates, fares, charges, and rules so recommended, without subjecting such company to any fine or penalty.

And this defendant denies that there was 320
any oppressive or illegal purpose whatever in agreeing to any of the provisions of the said agreement, or that any of the provisions of the said agreement were unjust, oppressive or unlawful, or that there was inserted in the said agreement any provision, the purpose or intention of which was, or which has the effect, to combine the freight and divide the earnings of the said railroad companies, parties thereto, or any portion thereof, or in any respect to restrain or monopolize trade or commerce among the several States and Territories of the United States.

XII.—This defendant answering the allegations 321
of the bill of complaint as to the right of any company to retire from the association created by said agreement, and as to the duration of the said agreement, begs leave to refer to the provisions of said agreement in that behalf; and this defendant admits that it is provided in the said agreement that the Board of Managers, therein created and charged with the duty of executing the same, should have their principal office in the City of New York, in the Southern District of New York, and that the said Board of Managers has been organized under said agreement, and did at

322 the time of the filing of the bill herein consist of the persons in that behalf mentioned in said bill of complaint; and that the said railroad companies have put into full operation all the provisions of their said agreement and, through the Board of Managers and other officers, hold meetings in the City of New York and Southern District of New York, but denies that such acts, or any of them, are done with any unlawful purpose or in any respect operated to any detriment or disadvantage of the public, or are in violation of any of the laws of the United States.

XIII.—And this defendant further answering, touching the matters and things alleged in the said bill of complaint, says: That the railroad systems
323 of the United States, and in particular those parts of the same which are embraced under the operation of the agreement mentioned in the said bill, had grown into the condition in which they were at the time of the making of the said agreement, by a long and gradual process, in obedience, partly to the necessities of trade and commerce, and partly to the supply of capital and the display of enterprise in furnishing railroad facilities for such trade and commerce; that the great lines of railroad in the United States, and in particular the trunk lines constituting the systems mentioned
324 in said bill of complaint, had been made up of roads originally constructed for comparatively short distances, and afterwards, from time to time lengthened by additions, in some cases constructed by the same corporations by which the first roads were owned and in others by different corporations, and that the same had in like manner, from time to time, been enlarged and extended laterally and otherwise by new roads and extensions of roads, until the whole country had been covered by a network of lines which had, from time to time, by purchase, lease, merger, sale under the foreclosure of mortgages, and other methods of con-

solidation, been united under proprietorships very 325
few in number as compared with those constructing and controlling the original parts; that the original and separate roads were built from time to time in response to the most pressing demands, because the enterprise was promising and hopeful in point of expected profit, and that the gradual consolidation through the means above mentioned had been shaped in accordance with the necessities arising from the rapid growth of business, the building up of towns and cities and the concentration of business interests in the same; that originally transportation for considerable distances could only be had by successive dealings with different railroads under different proprietorships and control, and so 326
required, to the great embarrassment of trade, frequent changes of cars, by reason of difference in railroad gauge or refusal to interchange cars on roads of equal gauges; that this embarrassment had become aggravated by the circumstance that the tariffs of rates were different upon different railroads and few, if any, joint tariffs existed by which transportation could be rapid, simple and convenient and the cost thereof certain and known beforehand; that the difficulties and embarrassments thus encumbering the trade and commerce of the country could be overcome only as they had, in fact, been overcome, by the consolidation of ownerships, or, where this was not practicable, by conference, agreement and com- 327
munity of arrangement among the numerous independent roads; that the trade and commerce of the country absolutely required such conferences and the making of mutual and harmonious arrangements between railroads, and that for many years it had been the practice with all well-conducted railroad companies to enter into such mutual arrangements, for the purpose of facilitating their own operations and accommodating the trade and commerce of the country; that without such mutual arrangements it would have been wholly impossible to move with efficiency the enormous traffic to

328 which the business of the country had given rise, and that the necessity for such arrangements had been universally acknowledged by all managers of railroad companies, by all shippers and other persons engaged in trade requiring the transportation of merchandise, by State legislatures in requiring railroad companies to make connections with each other and to allow the passage over one road of trains and cars belonging to another, and by the Congress of the United States in the passage of the act commonly known as the Interstate Commerce Act, and that the result of the system which had thus gradually grown up and been established has been such thorough and efficient means of trans-
329 portation by rail that the smallest article of traffic may be transported between points the most remote, on schedules and upon terms and at a cost known accurately in advance by the shipper.

XIV.—This defendant further avers that each of the defendant companies, parties to said agreement, is subject to the provisions of the Act to regulate commerce enacted by Congress for the regulation of the business of interstate transportation by rail; that the leading requirements of the said Act are, that all charges shall be reasonable and just; that all unjust discrimination shall be prohibited, and that no undue or unreasonable
330 preference or advantages shall be given; that in connection with the aforesaid provisions, and in aid of the enforcement thereof, all common carriers subject to said Act are thereby required to establish and print schedules showing the rates, fares and charges in force at any time for the transportation of persons and property, together with the classification of freight, and any rules or regulations which in anywise change, affect or determine any part of the aggregate of such rates, fares and charges; that the carriers are required to file these schedules with the Interstate Commerce Commission and to post copies thereof in their stations;

that the carriers are prohibited from changing such 331
schedules, except after ten days' like filing and posting in case of advances, and after three days' like filing and posting in case of reductions, and are also prohibited, under heavy penalties, from charging, demanding, collecting or receiving from any person or persons a greater or less compensation for the transportation of persons or property than is specified by the schedule in force at the time, to the end that no unjust discrimination, in the form of special rates, rebates, drawbacks or otherwise, shall be effected in favor of any shipper; that like provisions are also made in respect to joint traffic which passes over the line of more than one railroad in the course of its transportation, and 332
said Act also requires that reasonable, proper and equal facilities shall be afforded for the interchange of such joint traffic. That the defendant companies, by said Act, are also required to so establish said rates, rules, regulations and classifications of freight that no person, company, firm, corporation, locality or description of traffic shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; that said requirements involve not only the determination in advance of what is a just and reasonable rate upon every article of traffic from every point to every other point over the lines of each individual carrier, and over all joint lines, but also the establish-
ment of a vast number of rules and regulations 333
affecting the transportation of freight, which are necessary to prevent discrimination and favoritism among shippers, together with the classification which shall be employed in freight traffic, all of which must be done in such manner that no person, locality or description of traffic shall be subjected to prejudice or disadvantage in any respect whatsoever.

And this defendant avers that concerted action between the carriers is indispensable in order to comply with the aforesaid and other provisions of

334 the interstate commerce law; that the fixing of joint rates, and of a classification of freight for general use, is obviously a matter requiring mutual agreement, and the establishment of every joint rate also involves the fixing of divisions thereof; that for the establishment of tariffs to and from common points a preliminary agreement between the lines in interest is equally necessary, for the reason that unless tariffs for traffic common to two or more lines are equivalent, the business will all flow to the lines naming the lower rates, and other lines will be compelled at once to make reductions in their tariffs, a process which, if pursued, will speedily reduce the rates below a just and reason-
335 able compensation, and will lead to bankruptcies, involving either the extinction of routes or their absorption by competing routes; that the prohibition of preferences and advantages between localities, and in respect to particular descriptions of traffic, necessarily involves a preliminary establishment of the relations proper to be maintained; that such preferences and advantages are equally disastrous and illegitimate when they exist between the tariffs of two or three different carriers as when they appear upon the tariffs of a single carrier; that the Interstate Commerce Act absolutely requires that rates shall be fairly adjusted between localities, and between points of
336 production and consumption of all articles, many of which points are far removed from each other, and are situated upon different railroad lines; and that in the last-mentioned matter, which comprises a great part of the work of the Joint Traffic Association, the several carriers necessarily reflect the interest of shippers upon their respective lines, each official seeking to stimulate and increase the traffic of his own road.

XV.—And this defendant, further answering, avers that it has been a matter of official report by the Interstate Commerce Commission, and this de-

fendant is informed, and believes and avers, that for 337
several years prior to the 19th day of November, 1895, such part of commerce between the States and between the States and foreign countries as consisted of railroad transportation was in a demoralized condition, due in a very large measure to illegitimate competition; that such competition resulted on many lines in the cutting of rates, the giving of rebates and other secret advantages to shippers and numerous unfair practices in order to secure business; that traffic was by such lines often accepted at unremunerative prices in order to keep the railroads employed; that the object sought to be attained by the competing parties was not the benefit of the public or the earning of revenue so as to give 338
to the investor a reasonable and just rate of interest upon his investment, but to swell the volume of tonnage and the number of passengers carried upon individual roads without substantial increase of the volume of traffic upon the roads collectively, and without regard to the cost or the income produced; that such conditions resulted on some lines in great and useless damage to the way, bridges and superstructure of the railroads and great wear and tear to the rolling stock and other equipment consequent upon the carriage of an excessive volume of traffic at unremunerative rates, and the inability and failure to properly maintain the road and appurtenances and rolling stock and equipment; that 339
in consequence of this desire on the part of such railroad companies to obtain business large numbers of persons were employed as soliciting and contracting agents and in through co-operative and commission freight lines, the services of many of whom could with due regard to economy be dispensed with and most of whom in many cases would not have been employed, except as means of self-defense against the action of other companies suspected of illegitimate practices—all the above improper practices tending to, and sometimes resulting in, non-payment of divi-

340 dends, default of interest upon the bonds of railway companies, decrease of earnings, and deterioration and partial destruction of railway properties, impairment of the efficiency and safety of the public service, and great injury to the people of the United States.

And this defendant denies that the true interests of the general public in the operation of the railroads consists in obtaining rates and fares that are unreasonably low or unremunerative to the companies; and it insists, on the contrary, that the duty of the companies cannot be performed with due regard to the public interests upon any such terms, nor as this defendant is advised and believes, can
341 it long be so transacted at all.

And this defendant further avers that a demoralized condition of the business of railroad transportation, such as above described, must always result in rate wars and sudden and violent fluctuations in rates; and that great injury has been caused to the public as a result of the failure or inability of the companies engaged in interstate commerce to maintain reasonable and proper rates, fixed by general acquiescence in the fact of their reasonableness and propriety; that uniformity and stability in the rates of transportation are advantageous to the public, while the cutting of rates below what is reasonable and proper must always result in crip-
342 pling the companies engaged in transportation, in depriving them of the ability to transport reasonably and properly, and in such uncertainty on the part of shippers as must interfere with the safe and proper transaction of their business.

XVI.—And this defendant further answering says that the maintenance of soliciting or contracting passenger and freight agencies such as above mentioned and intended to be abolished by the said agreement, involved an annual expenditure approximating four millions of dollars, and that the suppression or abandonment of many of such agencies

will secure economy of administration and an ad- 343
vantageous result both to the companies and the shippers; that because of the remoteness of these agencies from the general offices of the companies, and the fact of their individual contact with shippers when dealing directly with them in reference to rates, it has become difficult to confine them in every instance to an observance of the provisions of the Act to regulate Commerce and other laws and regulations or to the instructions of the officers of the companies; and it was believed that the discontinuance of them in a large part and making the remainder subordinate to the Managers of the Traffic Association would, and this defendant avers that the same does, tend to an enforcement of the pro- 344
visions of the said Act to regulate Commerce, and in no wise violates the provisions of that or any other law.

This defendant says that the purpose of the parties to the said agreement in inserting the provisions therein contained relating to freight lines and agencies was to prevent, so far as possible, the payment of commissions and the use of other subterfuges, secret practices and methods resulting in the past in unjust discriminations between shippers and in great detriment to the public.

XVII.—And this defendant further answering
says that in the course of the growth of the various 345
railroad systems hereinbefore mentioned, and as a result thereof, it had become apparent that certain of the competitive lines had indisputable advantages over others, either by reason of being shorter or superior in point of grade, or other particulars, and that the necessary tendency of such condition is that the superior lines should at equal rates attract the main body of the traffic; but that in railroad competition, unlike that prevailing in other branches of business, a company which may be unable to do business at a given rate must lower its rates, even though thereby it may be compelled to do its busi-

346 ness for less than the cost thereof, and that the result of such competition is to insure, if long continued, the bankruptcy and ruin of the weaker road, and either its destruction as a means of transportation or its absorption by its more powerful rivals, and the consequent extinguishment of competition to that extent.

And this defendant further says that the continuance of all the routes embraced by the systems mentioned in said bill of complaint is a great public advantage, inasmuch as there are periods in every year in which the pressure of traffic is so great as to bring into requisition all the facilities of all the lines, and that great and incalculable public injury
347 would result from the extinction of any such facilities, and that such injury would be fatal not only to those interests which embrace through traffic, but also all the local interests along the lines of such weaker routes.

And this defendant says that it has for many years past been found necessary in order to sustain such weaker routes and enable them to continue in operation and to perform their useful functions, that the disadvantages under which they labor should, in some measure, be recognized by voluntary concessions made by stronger roads for the purpose of securing to them a fair share of such through traffic as might not have been destined by the shippers
348 thereof for some particular route, and that the effect of such concessions has been salutary and for the interest not only of such weaker roads, but of the public at large.

XVIII.—And this defendant further answering says that the necessary demands of the trade and commerce of the country in connection with its system of railway transportation, hereinbefore mentioned, which can be satisfied only by concert of action between the various independent lines, and which have, in a certain measure, heretofore been accomplished by conference and agreement, have

not been fully and satisfactorily accomplished; and 349
that the object and purpose of the said agreement and of the various railroad companies, defendants herein, in entering into the same were to more fully and completely satisfy the requirements of the trade and commerce of the country in respect to railway transportation, and to check and remove, so far as possible, the disadvantages and mischiefs which would inevitably arise from the want of necessary concert of action and from illegitimate and ruinous competition.

That to this end the parties to said agreement reaffirmed the rates, fares, and charges and the rules applicable thereto which were in force and were authorized by the said companies, in respect to the 350
traffic covered by said agreement, at and prior to the making thereof. That said rates, fares, charges and rules were, and had been established by each corporation because they were reasonable, just and necessary, and schedules thereof had been duly filed with the Interstate Commerce Commission; and by said agreement the said companies provided a method by which the same could from time to to time be modified with due regard to the interests of all concerned; that power was, therefore, by the said agreement given to the Managers therein mentioned to recommend such changes in the said rates, fares, charges and rules as might be reasonable and just and necessary for governing the traffic covered 351
by the agreement and for protecting the interests of the parties to the said agreement therein, and that it was in and by the said agreement provided that any one of the companies, parties to said agreement, might, pursuant to the terms thereof by the action of its Board of Directors, disapprove of such recommendation, and that such disapproval should become effective thirty days after the receipt of such resolution of disapproval by the Board of Managers, and the powers of the said Board of Managers were in and by the said agreement expressly made subject to the provisions of the laws of the

352 United States; and the said agreement expressly provided that the powers conferred upon the Managers should be so construed and exercised as not to permit violation of the Interstate Commerce Act or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties thereto, and that the Board of Managers should co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges and rules established thereunder.

And this defendant further says that the powers granted in and by the said agreement to the Board of Managers in respect to recommending changes
353 in rates, fares, charges and rules, and the provisions of the said agreement relating to action to be taken upon such recommendation, were intended to promote the establishment of rates, fares, charges and rules which should be reasonable and just both to the transportation companies and shippers and passengers using the lines embraced within the scope of the said agreement, and this defendant believes and avers that such powers and provisions will promote the accomplishment of such purpose and intention by affording opportunity for the due consideration of the reasonableness of any proposed rate, fare, charge or rule by all the lines interested and an interchange of views on the effect of the
354 change recommended by the Board of Managers and at the same time, by checking strife and preventing illegitimate competition and sudden and selfish action, avert financial ruin to one or more of the competing companies and yet preserve to the public adequate facilities at fixed and reasonable prices and under stable and reasonable regulations.

And this defendant avers that a further practical effect of the provisions of said agreement relating to the power of said managers to recommend changes in said rates, fares, charges and rules is that in case, as is usual, any proposition

concerning the same shall involve discrimination 355
or prejudice to other points or on other lines, unless corresponding changes are elsewhere made, an opportunity is afforded, under the said agreement, for the reduction of rates, and for changes in rules and regulations, in such a way and manner as will maintain the due relations of rates, each with all others, and will prevent undue preference and advantage between individuals and between cities and towns, by making the reductions and changes, subject to the action of the respective boards of directors, effective over all lines at the same time.

And this defendant further avers that one of the practically injurious results to localities, of the conditions existing before and at the time of enter- 356
ing into the said agreement, arose from the fact that frequently two communities, or different parts of the same community, in a large sense interdependent, were each only accessible by a single line of railroad different from, and independent of, that serving the other; that unequal rates resulted, and great prejudice was caused to the locality served only by the independent line charging the higher rate or furnishing inferior facilities; that uniformity of rates and equality of facilities as between such independent lines were only attainable by such harmony of action as results from the existence of an association of the character established by the said agreement, and that the ten- 357
dency and effect of said agreement is to carry out and effectuate the purposes, in this regard, of the Act to regulate commerce.

And this defendant, further answering, avers that since the execution of the said agreement all the schedules aforesaid of rates, fares and charges and the rules applicable thereto, have been filed with the Managers of said Joint Traffic Association as provided in said agreement, and that the said rates, fares and charges and the rules applicable thereto are in all respects just and reasonable, have in no respects been disapproved by the said Interstate

358 Commerce Commission, and have been in all respects maintained and kept in force and effect, except that in some instances reductions of rates, fares and charges have been recommended by the said Managers of the Joint Traffic Association, and have been observed by the defendant corporations interested therein; but such reductions have been made not because the former rates were unreasonable or excessive, but for the purpose of avoiding or correcting discriminations, and securing uniformity of rates, or accommodating the changing necessities of business.

XIX.—And this defendant, further answering,
359 avers that the purpose and intention of the several railroad companies, parties to the said agreement, is honestly and fairly set forth in the body of said agreement, wherein it is provided, among other things, that the powers conferred upon the Managers of the said Joint Traffic Association shall be so construed and exercised as not to permit violation of the Interstate Commerce Act, or of any other law applicable to the premises, or any of the provisions of the charters or the laws of the companies, parties thereto, and that the Managers shall co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares and charges established under the said arti-
360 cles, and also in the preamble thereof wherein it is declared that the purposes of the said agreement are to aid in fulfilling the purposes of the Interstate Commerce Act, to co-operate with each other and adjacent transportation associations, to establish and maintain reasonable and just rates, fares, rules and regulations on State and Interstate traffic, to prevent unjust discrimination and to secure the reduction and concentration of agencies and the introduction of economies in the conduct of the freight and passenger service. And further avers that it is the purpose and intention of the said Joint Traffic Association and its Board of

Control and of its Board of Managers and 361
its several officers and of the several railroad companies, parties to the said agreement, fully, fairly and honestly to carry out the purposes stated in the said agreement, and that the said association, its boards and officers, and each and all of the said railroad companies, parties to the said agreement, have no other or different purpose or intention than in the said agreement and in this answer are set forth.

And this defendant denies the existence of any purpose, contract, agreement, contrivance, combination or conspiracy, in connection with the formation of the said Joint Traffic Association, or otherwise, to unjustly or oppressively increase or 362
augment the rates or fares charged for the transportation of interstate traffic, or to counteract the effect of free competition on the facilities or prices of transportation or to establish or maintain arbitrary or unreasonable rates or to prevent any one of the railroad companies, parties to the said agreement, from reducing rates, and it denies that by the formation of the said Joint Traffic Association the rates or prices for transporting traffic on any of the lines of the companies parties to the said agreement have been, or will be, unjustly, unreasonably or oppressively, increased or augmented; and it further denies the existence in connection with the formation of the said Joint Traffic Association, or 363
otherwise, of any intention to monopolize trade, traffic or commerce among or between the States, Territories or foreign countries in the bill of complaint mentioned and referred to, or that by reason of the formation of the said Joint Traffic Association or otherwise, such trade, traffic or commerce has been in fact or can or will be monopolized.

And this defendant says that while there is no requirement of law which establishes or requires free competition in the business of transportation, it was and is the intention of each of the companies parties to the said agreement to obtain for

364 itself all of said trade, traffic and commerce possible as against all other of such companies and all outside lines.

XX.—This defendant further says that while the lines enumerated in the said agreement and in the bill of complaint as being within the purview of the said agreement are lines of transportation and communication used for interstate commerce, they are not the only lines used or capable of being used within the same transportation territory for such traffic, but that there are several other lines which can be and are used for such traffic, and over which a large amounf of such traffic has been transported
365 since the said agreement went into effect.

This defendant, further answering, says that the same separate, distinctive and competitive lines of transportation and communication extending among and between the States of the United States continue to exist as before the making of the said agreement of the 19th of November, 1895.

XXI.—And this defendant further avers that the several railroad companies, parties to the said agreement, intend to continue to be engaged independently in transportation among the States and Territories of the United States and with foreign nations, and to continue in active competition with
366 each other for traffic both in freight and passengers, and to furnish to all persons engaged in such traffic or travel among the several States and Territories of the United States separate and independent and competitive lines of transportation in respect to the traffic mentioned in the bill of complaint, and further intend that all charges made for any service rendered or to be rendered in the transportation of passengers or property among the States and Territories of the United States and with foreign countries, or in connection therewith, shall be reasonable and just, and that no unjust or unreasonable or unlawful charge for such service

shall be exacted ; and that it is not the purpose or 367
intention of any of the railroad companies, parties to the said agreement, directly or indirectly, either by themselves or through any board or officer of the Joint Traffic Association, or otherwise, by any special rate, rebate, drawback, or other device, to charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of the Interstate Commerce Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially 368
similar circumstances and conditions ; and that no undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, shall be made or given, or any particular description of traffic be subjected to any undue or unreasonable preference or disadvantage in any respect whatsoever, and that each and every carrier, party to the said agreement, shall and will, according to their and each of their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from 369
their several lines and those connecting therewith, and shall not discriminate in their rates or charges between such connecting lines, and that it is the intention of the railroad companies, parties to the said agreement, and each of them, not to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, except by authority of the Interstate Commerce Commission, and that it is not the pur-

370 pose or intention of any or either of the railroad companies, parties to the said agreement, to pool freights of different and competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion of them.

XXII.—And this defendant further says that the said agreement of the 19th of November, 1895, was duly filed with the Interstate Commerce Commission, as required by law.

And this defendant further answers that there is nothing in the said agreement contained, nor was it intended that there should be anything in its operation or effect, which will in any manner interfere
371 with or tend to prevent the full performance by the companies parties thereto, respectively of all duties, imposed upon them or any of them by law, or the rendering of any service to the public which is or may be lawfully required of them or any or either of them in regard to the traffic covered by the said agreement.

XXIII.—And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on or about the 26th day of December, 1896, Wil-
372 liam R. Morrison, the Chairman of the Interstate Commerce Commission, addressed and delivered to the Attorney General of the United States a certain communication of which the following is a copy:

"INTERSTATE COMMERCE COMMISSION,
WASHINGTON, December 26, 1895.

Hon. JUDSON HARMON,
Attorney-General.

Dear Sir:

We have the honor to enclose herewith a copy of a contract, agreement, or arrangement entitled "Articles of Organization of the Joint Traffic

Association," entered into between certain common 373
carriers, corporations, named therein, forming said Joint Traffic Association, which is to take effect January 1st, 1896, and was filed with the Commission December 24, 1895. This contract, agreement, or arrangement is, we believe, in conflict with the Act to regulate commerce and cannot be carried into effect without violating the provisions of said Act.

Complying with the requirements of Section 12 of said Act, we have the honor to request that you will direct the U. S. District Attorney for the Southern District of New York or other proper jurisdiction to institute in the proper Court and prosecute under your direction all necessary proceedings, by 374
injunction or otherwise, to prevent the carrying into effect of said contract, agreement or arrangement as contemplated and provided for by said Articles of Organization, and for the punishment of all violations of said Act as the result of the formation of said Joint Traffic Association.

Respectfully,

WM. R. MORRISON,
Chairman.

But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant 375
does not know, and has not been informed, save by the allegations of the said amendment to said bill.

And this defendant further answering, says that the railroad companies, parties to the said agreement, are common carriers, engaged in transporting persons and property among the several States and Territories of the United States, and as such common carriers are subject to the provisions of the Act of Congress, approved February 4, 1887, entitled "An Act to regulate Commerce," with the various amendments and supplements thereto, and

376 that the said act and amendments and supplements thereto constitute a full, adequate and comprehensive system of regulation and the sole system of regulation which has been established by Congress for railroad companies as common carriers subject to said Act; and this defendant is informed and believes, and avers that no request has been made by the said Interstate Commerce Commission, created by said Act of Congress, to the District Attorney of the United States for the Southern District of New York, to institute or prosecute under the direction of the Attorney-General of the United States, this or any proceedings against this defendant, under the said Act of
377 Congress, approved February 4, 1887, entitled "An Act to regulate Commerce," and the several acts amendatory thereof and supplementary thereto, unless the said letter, a copy whereof is hereinabove set forth, be such a request, which this defendant is advised it is not, and this defendant will claim and insist upon the same benefit and advantage of such objection and omission as fully and completely as if this defendant had demurred to the said bill of complaint.

XXIV.—And this defendant further answering says that the railroad companies, parties to the said agreement, are not nor is either of them, nor is the
378 Joint Traffic Association, nor are its Boards or officers, or any or either of them, subject to the provisions of the Act of Congress entitled, "An Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," approved July 2, 1890, and that the last mentioned act was not an amendment or modification of The Act to regulate Commerce, approved February 4, 1887, and does not relate to the business of common carriers, but has application solely to so-called trusts, industrial combinations and attempted monopolies, undertaken by persons or corporations engaged in trade, as manufacturers, miners, dealers in pro-

ducts, either in raw or manufactured state or otherwise, who carry on the actual transactions which constitute trade or commerce as distinguished from railway corporations, which are engaged in the business of transportation, and that the said agreement of November 19, 1895, does not relate to or affect any trade or commerce within the purview of the said Act, and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 379

XXV.—This defendant is advised and believes and insists that the complainant cannot in one and the same suit claim the relief prayed in said bill of complaint upon the ground that the said agreement is in violation of the said "Act to regulate Commerce," and may be restrained on the request of the Interstate Commerce Commission, and also upon the ground that the said agreement is in violation of the "Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," and may be restrained on the demand of the Attorney-General, and also upon the general allegation that the said agreement is contrary to law and in violation of the rights of the citizens of the United States, and may be restrained without request or demand of any specified officer of the United States; that said alleged grounds of relief are distinct and separate, and cannot be united in the same suit; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 380 381

XXVI.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit or to any relief therein upon mere general allegations, such as contained in said bill, that the said agreement is unlawful, or without spe-

382 cifically alleging that it is in violation of some statute of the United States, and specifying the particular statute, and the particulars in which the said agreement is claimed to be in violation thereof; and this defendant will claim and insist upon the same benefit and advantage of this objection as fully and completely as if this defendant had demurred to the said bill of complaint.

XXVII.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit, or to any relief therein, upon any allegation that the said agreement is in violation of
383 the rights of the citizens of the United States; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to said bill of complaint.

And this defendant denies all and all manner of unlawful combination and conspiracy and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied is true to the knowledge or belief of this
384 defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct, and prays to be dismissed hence.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

[SEAL.] By E. D. WORCESTER,
Secretary.

FRANK LOOMIS,
Solicitor of the above-named Defendant.

E. J. PHELPS,
Of Counsel.

The answer of the defendant, the New York Central & Hudson River Railroad Company, was taken this 23d day of March, in the year eighteen hundred and ninety-six, before me, under the common seal of the said corporation, as by their said seal affixed appears. 385

[SEAL] E. B. HOLBROOK,
Notary Public,
Kings Co.

Certificate filed in New York County.

STATE OF NEW YORK, }
County of New York, } ss.

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HORACE J. HAYDEN, being duly sworn, on his oath, saith that he is the Second Vice-President of the New York Central & Hudson River Railroad Company, the above-named defendant, and a director of said company: that he has read the foregoing answer and knows its contents; that the same is true to the best of his knowledge, information and belief.

H. J. HAYDEN.

Sworn to before me this 23d day of March, 1896.

[SEAL] E. B. HOLBROOK,
Notary Public,
Kings Co. 387

Certificate filed in New York County.

(Endorsed):—Circuit Court of the United States for the Southern District of New York. In Equity. The United States of America, Complainant, vs. The Joint Traffic Association, et al., Defendants.—Answer of Defendant, The New York Central & Hudson River Railroad Company.—Frank Loomis, Solicitor for above named Defendant, Grand Central Depot, 42nd Street and Fourth Avenue, New York City.—U. S. Circuit Court, Filed Mar. 24, 1896.—John A. Shields, Clerk.

388 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, et al.

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It is hereby stipulated that the answer of The New York Central & Hudson River R. R. Company, one of the defendants in the above-entitled cause, be amended as follows:

1. By striking out the first paragraph of Article XXIII. of the anwer, and substituting in lieu thereof the following:

"And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on the 26th day of December, 1895, the Interstate
390 Commerce Commission made and entered on its records an order in substantially the following words:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of December, A. D. 1895.

The Commission having under consideration the Articles of Organization of the Joint Traffic Association, it was

Ordered, that the following communication, enclosing copy of said Articles of Organization, be

sent to the Attorney-General of the United States": 391

2. By striking out at the end of the communication above referred to the words:

"But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant does not know, and has not been informed, save by the allegations of the said amendment to said bill."

And inserting in lieu thereof the following:

"And this defendant is informed and believes that the chairman of said Interstate Commerce Commission did accordingly, on the same day, send to the Attorney General of the United States the letter last above set forth, and that the Attor- 392
ney-General received the same.

And this defendant is informed and believes that thereafter, and prior to the commencement of this suit, the said Attorney-General did direct the United States Attorney for the Southern District of New York to institute all necessary proceedings to prevent the parties to said agreement from carrying the same into effect, and to have the agreement declared null and void, both on the alleged ground that said agreement appeared to be in violation of the provisions of said Act to Regulate Commerce, as amended, and also in violation of the Act of July 2, 1890, entitled: 'An Act to protect Trade and Commerce against unlawful Restraints and 393
Monopolies,' and on all other grounds, if any, by reason of which the said agreement was contrary to law or in violation of the rights of the citizens of the United States.

But this defendant denies that the said Interstate Commerce Commission ever took any other action in the premises, or ever gave the defendants herein, or any of them, any notice of any such supposed investigation or order or report, or any opportunity to be heard in respect to the matter, or any part thereof, stated in the bill of complaint in this cause.

394 And this defendant denies that said Interstate Commerce Commission ever made any order or report, as required by law, requiring the defendants herein, or any of them, to desist from putting the said agreement in operation, or from doing any or either of the things provided for in said agreement.

And it further denies that either the proceedings had and taken by said Interstate Commerce Commission, as herein admitted, or any direction given pursuant thereto, were or are legally sufficient to warrant the institution, maintenance or prosecution of this suit."

395 FRANK LOOMIS,
Solicitor for the Deft.,
The N. Y. C. & H. R. R. R. Co.

I consent to the foregoing amendments.

WALLACE MACFARLANE,
U. S. Atty.

(Endorsed):--U. S. Circuit Court, Filed Apr. 10, 1896.—John A. Shields, Clerk.

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400 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Complainant,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY
401 COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY;
402 THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

Defendants.

ANSWER OF DEFENDANT.

The Lake Shore & Michigan Southern Railway Company.

The answer of THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, one of the defendants in the above-entitled suit to the bill of complaint of the United States of America, complainant therein.

This defendant, now and at all times hereafter 403
saving and reserving to itself all and all manner of benefit, exception or advantages which can or may be had or taken to the many errors, uncertainties, insufficiencies or other imperfections, in the said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are necessary or material for it to make answer to, answering says:

I. That it admits:

That the several railroad companies, defendants herein, are incorporated as in said bill of complaint alleged.

That The Joint Traffic Association is a voluntary 404
association organized under certain "Articles of Organization," entered into and executed by the said several railroad and railway companies, on or about the nineteenth day of November, 1895, a copy of which is annexed to the said bill of complaint as Exhibit A, and that the principal place of business of said Joint Traffic Association is in the City of New York, in the Southern District of New York; but this defendant avers that the said Joint Traffic Association is not incorporated, is not a common carrier and is not engaged in the transportation of freight or passengers.

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II.—This defendant further admits that all of said corporations defendant are common carriers and as such, at all the days and times mentioned in the bill of complaint and prior thereto, were and now are engaged in the transportation of freight and passengers, either separately or in connection with each other, continuously carried on among the several States of the United States, and among and between the several States of the United States and the Territories thereof, and between such States and Territories and foreign countries, and from places in the United States through foreign countries to other places in the United States.

406 But this defendant denies that any or either of said corporations have ever been otherwise engaged in interstate commerce, or that they, or any or either of them, have ever been engaged in any trade in or in relation to any article or commodity in anywise embraced within the operation or scope of said agreement.

III.—This defendant further admits that prior to the 19th day of November, 1895, the several railroad companies constituting what are termed in said agreement respectively the Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh Valley, the
407 Pennsylvania, the Vanderbilt and the Wabash systems, with their leased, controlled, or operated lines, owned, operated and controlled separate railroad lines or systems, engaged with their connections independently in commerce among the States and Territories of the United States and with foreign nations and were in active competition with each other for such traffic, both in freight and passengers, and furnished to all persons engaged in such traffic or travel among the States and Territories of the United States separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned; and this defendant avers that ever since the said 19th day of
408 November, 1895, the said railroad companies have continued to own, operate and control the same separate railroad lines or systems, engaged with their connections independently in said commerce, and that they have ever since continued to be and still are in active competition with each other for such traffic, and have ever since furnished and still continue to furnish to all persons engaged in such traffic or travel the same separate and independent and competing lines of transportation in respect to the traffic in said bill mentioned.

IV.—This defendant further admits and answers 409
that on or about the 19th day of November, 1895, the said railroad companies entered, as they were and are advised and believe they had a lawful right to do, into the certain contract, in the form of a written document, entitled "Articles of Organization of the Joint Traffic Association" hereinbefore mentioned.

But this defendant denies that the said contract is an unlawful contract in any of its provisions, or that it is or was intended to be a contract, agreement, combination or conspiracy to restrain trade or commeree among the several States, or was or is an attempt to monopolize, or does or will operate to monopolize, such trade or commerce, or is or was 410
intended to restrain or prevent legitimate competition among such railroads in respect to any inter-state trade or commerce, or does in any way restrain or prevent legitimate competition among said railroads in respect to any of such trade or commerce, or that the said companies or any or either of them in entering into said contract or at any time contrived or intended, or now intend to deprive the public, or have deprived the public engaged in any inter-state trade or transportation of any facilities or advantages which the said public theretofore had lawfully enjoyed from any independent competition of said railroads, or any or either of them, in respect to the traffic described in the bill of 411
complaint, or that the said companies, or any or either of them, at any time intended or now intend to establish or maintain rates of freight or passenger transportation fixed arbitrarily or uninfluenced by competition in respect to any traffic whatever; or that the effect of the said agreement is to establish or maintain rates of freight or passenger transportation fixed arbitrarily, or uninfluenced by competition in respect to any traffic whatever.

V.—This defendant admits that the said agreement establishes a Board of Managers consisting

412 of representatives of a number of the railroad companies or systems parties thereto, and that the agreement confers upon said Board of Managers the powers set forth in the said agreement, Exhibit A, annexed to the bill of complaint, for the provisions of which agreement this defendant begs leave to refer to the same. And this defendant denies each and every allegation of the bill of complaint imputing to the said agreement, or to the parties thereto any other agreement or intent than such as appears on the face thereof, and denies that the said Board of Managers, or any member thereof, has any power in regard to the subject matter embraced in the said agreement except as is
413 specifically granted to the said Board of Managers and the members thereof by the terms of the said agreement.

And this defendant denies that the said agreement confers upon the Board of Managers any right or authority to establish rates, fares, charges or rules for governing the traffic within the scope of the agreement.

VI.—This defendant further answering, denies that by the said agreement, or otherwise, the said companies, or any or either of them, surrendered to the said association any traffic whatever; or that it was or is the intention of said companies, or any or
414 either of them, or that it is or will be the effect of said agreement, to surrender to said association any traffic whatever.

VII.—This defendant admits that the traffic passing from, to or through the western termini of the trunk lines referred to in the said agreement constitutes a considerable and important part of all the freight and passenger traffic carried on between the several States and Territories of the United States, and between them and adjacent foreign countries, and that prior to the time when the said agreement went into effect the said rail-

road companies and systems, or many of them, 415
were in competition with each other for said traffic; but this defendant denies that such competition as conducted prior to the time when said agreement went into effect, resulted in advantage to the public engaged in such traffic or to the benefit or advantage of the people of the United States. And this defendant denies that said agreement was or is an oppressive or unlawful contract, agreement, combination or conspiracy.

VIII.—This defendant denies that in and by the terms of the said agreement attached to the bill of complaint, "Exhibit A," the said railroad companies, parties thereto, with the purpose of ter- 416
minating all or any competition among themselves for the freight and passenger traffic aforesaid, or for any purpose, unlawfully or otherwise, agreed to surrender the control of such traffic to the Board of Managers created by the terms of the said agreement, or agreed to terminate existing through co-operative or commission freight lines, although this defendant answers and admits that said companies, without any unlawful purpose, but as they were advised and believed and still are advised and believe they lawfully might do, agreed, for reasons of economy, to limit or terminate some or many of the powers or functions of existing through co-operative and commission freight lines, and, 417
except with the approval of the managers, to abandon all agencies for soliciting or contracting for any of the freight or passenger traffic within the scope of the said agreement, and to vest in the said Board of Managers full authority to organize joint freight and passenger agencies, as they might deem desirable; and that each and every of the said companies, in and by the said agreement, as they were advised and believed and still are advised and believe they lawfully might do, agreed not to maintain, directly or indirectly, in respect to the traffic covered by said agreement, any freight or

418 passenger agency except with the approval of the said Board of Managers, and to employ nobody in soliciting or contracting for any of such traffic to whom the said Board of Managers should object; but this defendant denies that the said companies, or any or either of them, in and by the said agreement or otherwise, surrendered to the said Board of Managers full or absolute control over all or any of the said competitive interstate traffic or commerce within the scope of said agreement, and this defendant avers that the sole purpose of the parties to the agreement in inserting the provisions therein contained relative to freight lines and agencies was, so far as they lawfully might, to prevent
419 illegitimate and ruinous competition, and the payment of rebates and commissions and the use of other subterfuges and secret practices which would result in unjust discriminations as between shippers and detriment to the public.

IX.—This defendant denies that in and by the said agreement the said companies, or any of them, unlawfully or in restraint of trade or commerce among the several States, or otherwise, agreed that the said Board of Managers should divide the said competitive traffic among the railroad companies, parties to the said agreement, in such proportions as the said Board of Managers should determine,
420 or that full control of any of the aforesaid competitive traffic was surrendered or entrusted by the terms of said agreement to the said Board of Managers; but this defendant admits that by said agreement it was provided that the Managers should be charged with the duty of securing to each of the companies parties thereto equitable proportions of the competitive traffic covered by said agreement so far as might be legally done; and this defendant denies that the said agreement unlawfully or otherwise combined a large or any part of the freight business of the said several competing railroads or railroad systems, or unlaw-

fully restrained or prevented competition among 421
the said railroads, or any or either of them in respect to any competitive traffic, or unlawfully restrained trade or commerce among the several States and Territories of the United States, or unlawfully or otherwise attempted to monopolize any part of such interstate trade or commerce.

X.—This defendant denies that the several railroad companies or systems, parties to the said agreement, or any or either of them, in or by the said agreement or otherwise, agreed that the Board of Managers created by said agreement and thereby charged with the execution thereof, should have power to establish the rates, fares or charges 422
for carrying such interstate traffic, either freight or passenger.

This defendant admits that the said agreement conferred upon said Board of Managers power to determine, when in their judgment necessary, the divisions of rates, fares and charges between connecting companies, parties to said agreement, and so far as practicable, between companies parties to said agreement and other railroad companies connecting with the parties to said agreement or any of them, keeping in view uniformity and the equities involved.

But this defendant answers and avers that the power conferred upon the said Board of Managers 423
to determine the divisions of rates and fares between the several railroad companies was not a power conferred upon the Board of Managers to fix or determine rates for through traffic over connecting lines, but only to fix and determine the *pro rata* share or division of such established through rates or fares to be apportioned to the several railroad companies owning or operating the connecting railroads constituting such through lines.

And this defendant denies that in or by the said agreement the said companies or any or either of

424 them unlawfully, or in restraint of interstate trade or commerce or otherwise contracted, agreed or combined among themselves for the division between them of a portion of the earnings of the said several railroad companies, parties to the said agreement. And further denies that the said companies or systems, parties to said agreement, or any or either of them, had any purpose to restrain interstate trade or commerce by unlawfully or otherwise pooling or combining any part thereof, for which, prior to the date of the said agreement the said railroads or systems, or any or either of them, were actively or independently competing.

And this defendant further denies that the
425 unrestrained and illegitimate competition for interstate trade and commerce by the several railroad companies and systems which prevailed prior to the first day of January, eighteen hundred and ninety-six, and which in the said bill of complaint is erroneously styled active and independent competition, was to the advantage of the public or the United States in facilities, rates, fares or charges or otherwise.

XI.—This defendant denies that in and by said agreement the railroad companies and systems aforesaid, parties thereto, agreed that any failure to abide by the rates, fares and charges to govern the inter-
426 state traffic and commerce aforesaid, as recommended by the Board of Managers aforesaid, should be deemed a violation of said agreement or articles of organization. But this defendant avers that it was provided by the said agreement that the Managers should from time to time recommend such changes in said rates, fares, charges and rules as might be reasonable and just and necessary for the governing of the traffic covered by the said agreement and for protecting the interests therein of the parties to the said agreement, and that the failure to observe such recommendations by any party to the said agreement as and when made should

be deemed a violation of the said agreement, and 427
that the company or companies committing such violation should be subjected to the fines and penalties, in said agreement mentioned.

But this defendant avers that such provision of said agreement is subject to and is qualified and modified by other provisions of said agreement, under and by virtue of which any railroad company may, so far as concerns itself, by action of its Board of Directors, and upon timely and reasonable notice, disapprove, deviate from and change the rates, fares, charges, and rules so recommended, without subjecting such company to any fine or penalty.

And this defendant denies that there was 428
any oppressive or illegal purpose whatever in agreeing to any of the provisions of the said agreement, or that any of the provisions of the said agreement were unjust, oppressive or unlawful, or that there was inserted in the said agreement any provision, the purpose or intention of which was, or which has the effect, to combine the freight and divide the earnings of the said railroad companies, parties thereto, or any portion thereof, or in any respect to restrain or monopolize trade or commerce among the several States and Territories of the United States.

XII.—This defendant answering the allegations 429
of the bill of complaint as to the right of any company to retire from the association created by said agreement, and as to the duration of the said agreement, begs leave to refer to the provisions of said agreement in that behalf; and this defendant admits that it is provided in the said agreement that the Board of Managers, therein created and charged with the duty of executing the same, should have their principal office in the City of New York, in the Southern District of New York, and that the said Board of Managers has been organized under said agreement, and did at

430 the time of the filing of the bill herein consist of the persons in that behalf mentioned in said bill of complaint; and that the said railroad companies have put into full operation all the provisions of their said agreement and, through the Board of Managers and other officers, hold meetings in the City of New York and Southern District of New York, but denies that such acts, or any of them, are done with any unlawful purpose or in any respect operated to any detriment or disadvantage of the public, or are in violation of any of the laws of the United States.

XIII.—And this defendant further answering, touching the matters and things alleged in the said bill of complaint, says: That the railroad systems
431 of the United States, and in particular those parts of the same which are embraced under the operation of the agreement mentioned in the said bill, had grown into the condition in which they were at the time of the making of the said agreement, by a long and gradual process, in obedience, partly to the necessities of trade and commerce, and partly to the supply of capital and the display of enterprise in furnishing railroad facilities for such trade and commerce; that the great lines of railroad in the United States, and in particular the trunk lines constituting the systems mentioned
432 in said bill of complaint, had been made up of roads originally constructed for comparatively short distances, and afterwards, from time to time lengthened-by additions, in some cases constructed by the same corporations by which the first roads were owned and in others by different corporations, and that the same had in like manner, from time to time, been enlarged and extended laterally and otherwise by new roads and extensions of roads, until the whole country had been covered by a network of lines which had, from time to time, by purchase, lease, merger, sale under the foreclosure of mortgages, and other methods of con-

solidation, been united under proprietorships very 433
few in number as compared with those constructing
and controlling the original parts; that the original
and separate roads were built from time to time in
response to the most pressing demands, because the
enterprise was promising and hopeful in point of
expected profit, and that the gradual consolida-
tion through the means above mentioned had been
shaped in accordance with the necessities arising
from the rapid growth of business, the building up
of towns and cities and the concentration of busi-
ness interests in the same; that originally trans-
portation for considerable distances could only be
had by successive dealings with different railroads
under different proprietorships and control, and so 434
required, to the great embarrassment of trade, fre-
quent changes of cars, by reason of difference in rail-
road gauge or refusal to interchange cars on roads of
equal gauges; that this embarrassment had become
aggravated by the circumstance that the tariffs of
rates were different upon different railroads and few,
if any, joint tariffs existed by which transportation
could be rapid, simple and convenient and the cost
thereof certain and known beforehand; that the dif-
ficulties and embarrassments thus encumbering the
trade and commerce of the country could be over-
come only as they had, in fact, been overcome, by the
consolidation of ownerships, or, where this was not
practicable, by conference, agreement and com- 435
munity of arrangement among the numerous inde-
pendent roads; that the trade and commerce of the
country absolutely required such conferences and
the making of mutual and harmonious arrange-
ments between railroads, and that for many years it
had been the practice with all well-conducted rail-
road companies to enter into such mutual arrange-
ments, for the purpose of facilitating their own
operations and accommodating the trade and com-
merce of the country; that without such mutual
arrangements it would have been wholly impossible
to move with efficiency the enormous traffic to

436 which the business of the country had given rise, and that the necessity for such arrangements had been universally acknowledged by all managers of railroad companies, by all shippers and other persons engaged in trade requiring the transportation of merchandise, by State legislatures in requiring railroad companies to make connections with each other and to allow the passage over one road of trains and cars belonging to another, and by the Congress of the United States in the passage of the act commonly known as the Interstate Commerce Act, and that the result of the system which had thus gradually grown up and been established has been such thorough and efficient means of trans-
437 portation by rail that the smallest article of traffic may be transported between points the most remote, on schedules and upon terms and at a cost known accurately in advance by the shipper.

XIV.—This defendant further avers that each of the defendant companies, parties to said agreement, is subject to the provisions of the Act to regulate commerce enacted by Congress for the regulation of the business of interstate transportation by rail; that the leading requirements of the said Act are, that all charges shall be reasonable and just; that all unjust discrimination shall be prohibited, and that no undue or unreasonable
438 preference or advantages shall be given; that in connection with the aforesaid provisions, and in aid of the enforcement thereof, all common carriers subject to said Act are thereby required to establish and print schedules showing the rates, fares and charges in force at any time for the transportation of persons and property, together with the classification of freight, and any rules or regulations which in anywise change, affect or determine any part of the aggregate of such rates, fares and charges; that the carriers are required to file these schedules with the Interstate Commerce Commission and to post copies thereof in their stations;

that the carriers are prohibited from changing such 439
schedules, except after ten days' like filing and posting in case of advances, and after three days' like filing and posting in case of reductions, and are also prohibited, under heavy penalties, from charging, demanding, collecting or receiving from any person or persons a greater or less compensation for the transportation of persons or property than is specified by the schedule in force at the time, to the end that no unjust discrimination, in the form of special rates, rebates, drawbacks or otherwise, shall be effected in favor of any shipper; that like provisions are also made in respect to joint traffic which passes over the line of more than one railroad in the course of its transportation, and 440
said Act also requires that reasonable, proper and equal facilities shall be afforded for the interchange of such joint traffic. That the defendant companies, by said Act, are also required to so establish said rates, rules, regulations and classifications of freight that no person, company, firm, corporation, locality or description of traffic shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; that said requirements involve not only the determination in advance of what is a just and reasonable rate upon every article of traffic from every point to every other point over the lines of each individual carrier, and over all joint lines, but also the establish-
ment of a vast number of rules and regulations 441
affecting the transportation of freight, which are necessary to prevent discrimination and favoritism among shippers, together with the classification which shall be employed in freight traffic, all of which must be done in such manner that no person, locality or description of traffic shall be subjected to prejudice or disadvantage in any respect whatsoever.

And this defendant avers that concerted action between the carriers is indispensable in order to comply with the aforesaid and other provisions of

442 the interstate commerce law; that the fixing of joint rates, and of a classification of freight for general use, is obviously a matter requiring mutual agreement, and the establishment of every joint rate also involves the fixing of divisions thereof; that for the establishment of tariffs to and from common points a preliminary agreement between the lines in interest is equally necessary, for the reason that unless tariffs for traffic common to two or more lines are equivalent, the business will all flow to the lines naming the lower rates, and other lines will be compelled at once to make reductions in their tariffs, a process which, if pursued, will speedily reduce the rates below a just and reason-
443 able compensation, and will lead to bankruptcies, involving either the extinction of routes or their absorption by competing routes; that the prohibition of preferences and advantages between localities, and in respect to particular descriptions of traffic, necessarily involves a preliminary establishment of the relations proper to be maintained; that such preferences and advantages are equally disastrous and illegitimate when they exist between the tariffs of two or three different carriers as when they appear upon the tariffs of a single carrier; that the Interstate Commerce Act absolutely requires that rates shall be fairly adjusted between localities, and between points of
444 production and consumption of all articles, many of which points are far removed from each other, and are situated upon different railroad lines; and that in the last-mentioned matter, which comprises a great part of the work of the Joint Traffic Association, the several carriers necessarily reflect the interest of shippers upon their respective lines, each official seeking to stimulate and increase the traffic of his own road.

XV.—And this defendant, further answering, avers that it has been a matter of official report by the Interstate Commerce Commission, and this de-

fendant is informed, and believes and avers, that for 445
several years prior to the 19th day of November, 1895, such part of commerce between the States and between the States and foreign countries as consisted of railroad transportation was in a demoralized condition, due in a very large measure to illegitimate competition; that such competition resulted on many lines in the cutting of rates, the giving of rebates and other secret advantages to shippers and numerous unfair practices in order to secure business; that traffic was by such lines often accepted at unremunerative prices in order to keep the railroads employed; that the object sought to be attained by the competing parties was not the benefit of the public or the earning of revenue so as to give 446
to the investor a reasonable and just rate of interest upon his investment, but to swell the volume of tonnage and the number of passengers carried upon individual roads without substantial increase of the volume of traffic upon the roads collectively, and without regard to the cost or the income produced; that such conditions resulted on some lines in great and useless damage to the way, bridges and superstructure of the railroads and great wear and tear to the rolling stock and other equipment consequent upon the carriage of an excessive volume of traffic at unremunerative rates, and the inability and failure to properly maintain the road and appurtenances and rolling stock and equipment; that 447
in consequence of this desire on the part of such railroad companies to obtain business large numbers of persons were employed as soliciting and contracting agents and in through co-operative and commission freight lines, the services of many of whom could with due regard to economy be dispensed with and most of whom in many cases would not have been employed, except as means of self-defense against the action of other companies suspected of illegitimate practices—all the above improper practices tending to, and sometimes resulting in, non-payment of divi-

448 dends, default of interest upon the bonds of railway companies, decrease of earnings, and deterioration and partial destruction of railway properties, impairment of the efficiency and safety of the public service, and great injury to the people of the United States.

And this defendant denies that the true interests of the general public in the operation of the railroads consists in obtaining rates and fares that are unreasonably low or unremunerative to the companies; and it insists, on the contrary, that the duty of the companies cannot be performed with due regard to the public interests upon any such terms, nor as this defendant is advised and believes, can
449 it long be so transacted at all.

And this defendant further avers that a demoralized condition of the business of railroad transportation, such as above described, must always result in rate wars and sudden and violent fluctuations in rates; and that great injury has been caused to the public as a result of the failure or inability of the companies engaged in interstate commerce to maintain reasonable and proper rates, fixed by general acquiescence in the fact of their reasonableness and propriety; that uniformity and stability in the rates of transportation are advantageous to the public, while the cutting of rates below what is reasonable and proper must always result in crip-
450 pling the companies engaged in transportation, in depriving them of the ability to transport reasonably and properly, and in such uncertainty on the part of shippers as must interfere with the safe and proper transaction of their business.

XVI.—And this defendant further answering says that the maintenance of soliciting or contracting passenger and freight agencies such as above mentioned and intended to be abolished by the said agreement, involved an annual expenditure approximating four millions of dollars, and that the suppression or abandonment of many of such agencies

will secure economy of administration and an ad- 451
vantageous result both to the companies and the shippers; that because of the remoteness of these agencies from the general offices of the companies, and the fact of their individual contact with shippers when dealing directly with them in reference to rates, it has become difficult to confine them in every instance to an observance of the provisions of the Act to regulate Commerce and other laws and regulations or to the instructions of the officers of the companies; and it was believed that the discontinuance of them in a large part and making the remainder subordinate to the Managers of the Traffic Association would, and this defendant avers that the same does, tend to an enforcement of the pro- 452
visions of the said Act to regulate Commerce, and in no wise violates the provisions of that or any other law.

This defendant says that the purpose of the parties to the said agreement in inserting the provisions therein contained relating to freight lines and agencies was to prevent, so far as possible, the payment of commissions and the use of other subterfuges, secret practices and methods resulting in the past in unjust discriminations between shippers and in great detriment to the public.

XVII.—And this defendant further answering says that in the course of the growth of the various 453
railroad systems hereinbefore mentioned, and as a result thereof, it had become apparent that certain of the competitive lines had indisputable advantages over others, either by reason of being shorter or superior in point of grade, or other particulars, and that the necessary tendency of such condition is that the superior lines should at equal rates attract the main body of the traffic; but that in railroad competition, unlike that prevailing in other branches of business, a company which may be unable to do business at a given rate must lower its rates, even though thereby it may be compelled to do its busi-

454 ness for less than the cost thereof, and that the result of such competition is to insure, if long continued, the bankruptcy and ruin of the weaker road, and either its destruction as a means of transportation or its absorption by its more powerful rivals, and the consequent extinguishment of competition to that extent.

And this defendant further says that the continuance of all the routes embraced by the systems mentioned in said bill of complaint is a great public advantage, inasmuch as there are periods in every year in which the pressure of traffic is so great as to bring into requisition all the facilities of all the lines, and that great and incalculable public injury
455 would result from the extinction of any such facilities, and that such injury would be fatal not only to those interests which embrace through traffic, but also all the local interests along the lines of such weaker routes.

And this defendant says that it has for many years past been found necessary in order to sustain such weaker routes and enable them to continue in operation and to perform their useful functions, that the disadvantages under which they labor should, in some measure, be recognized by voluntary concessions made by stronger roads for the purpose of securing to them a fair share of such through traffic as might not have been destined by the shippers
456 thereof for some particular route, and that the effect of such concessions has been salutary and for the interest not only of such weaker roads, but of the public at large.

XVIII.—And this defendant further answering says that the necessary demands of the trade and commerce of the country in connection with its system of railway transportation, hereinbefore mentioned, which can be satisfied only by concert of action between the various independent lines, and which have, in a certain measure, heretofore been accomplished by conference and agreement, have

not been fully and satisfactorily accomplished; and 457
that the object and purpose of the said agreement and of the various railroad companies, defendants herein, in entering into the same were to more fully and completely satisfy the requirements of the trade and commerce of the country in respect to railway transportation, and to check and remove, so far as possible, the disadvantages and mischiefs which would inevitably arise from the want of necessary concert of action and from illegitimate and ruinous competition.

That to this end the parties to said agreement reaffirmed the rates, fares, and charges and the rules applicable thereto which were in force and were authorized by the said companies, in respect to the 458
traffic covered by said agreement, at and prior to the making thereof. That said rates, fares, charges and rules were, and had been established by each corporation because they were reasonable, just and necessary, and schedules thereof had been duly filed with the Interstate Commerce Commission; and by said agreement the said companies provided a method by which the same could from time to to time be modified with due regard to the interests of all concerned; that power was, therefore, by the said agreement given to the Managers therein mentioned to recommend such changes in the said rates, fares, charges and rules as might be reasonable and just and necessary for governing the traffic covered 459
by the agreement and for protecting the interests of the parties to the said agreement therein, and that it was in and by the said agreement provided that any one of the companies, parties to said agreement, might, pursuant to the terms thereof by the action of its Board of Directors, disapprove of such recommendation, and that such disapproval should become effective thirty days after the receipt of such resolution of disapproval by the Board of Managers, and the powers of the said Board of Managers were in and by the said agreement expressly made subject to the provisions of the laws of the

460 United States; and the said agreement expressly provided that the powers conferred upon the Managers should be so construed and exercised as not to permit violation of the Interstate Commerce Act or any other law applicable to the premises, or any provision of the charters or the laws applicable to any of the companies parties thereto, and that the Board of Managers should co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges and rules established thereunder.

And this defendant further says that the powers granted in and by the said agreement to the Board of Managers in respect to recommending changes
461 in rates, fares, charges and rules, and the provisions of the said agreement relating to action to be taken upon such recommendation, were intended to promote the establishment of rates, fares, charges and rules which should be reasonable and just both to the transportation companies and shippers and passengers using the lines embraced within the scope of the said agreement, and this defendant believes and avers that such powers and provisions will promote the accomplishment of such purpose and intention by affording opportunity for the due consideration of the reasonableness of any proposed rate, fare, charge or rule by all the lines interested and an interchange of views on the effect of the
462 change recommended by the Board of Managers and at the same time, by checking strife and preventing illegitimate competition and sudden and selfish action, avert financial ruin to one or more of the competing companies and yet preserve to the public adequate facilities at fixed and reasonable prices and under stable and reasonable regulations.

And this defendant avers that a further practical effect of the provisions of said agreement relating to the power of said managers to recommend changes in said rates, fares, charges and rules is that in case, as is usual, any proposition

concerning the same shall involve discrimination 463
or prejudice to other points or on other lines, unless corresponding changes are elsewhere made, an opportunity is afforded, under the said agreement, for the reduction of rates, and for changes in rules and regulations, in such a way and manner as will maintain the due relations of rates, each with all others, and will prevent undue preference and advantage between individuals and between cities and towns, by making the reductions and changes, subject to the action of the respective boards of directors, effective over all lines at the same time.

And this defendant further avers that one of the practically injurious results to localities, of the conditions existing before and at the time of enter- 464
ing into the said agreement, arose from the fact that frequently two communities, or different parts of the same community, in a large sense interdependent, were each only accessible by a single line of railroad different from, and independent of, that serving the other; that unequal rates resulted, and great prejudice was caused to the locality served only by the independent line charging the higher rate or furnishing inferior facilities; that uniformity of rates and equality of facilities as between such independent lines were only attainable by such harmony of action as results from the existence of an association of the character established by the said agreement, and that the ten- 465
dency and effect of said agreement is to carry out and effectuate the purposes, in this regard, of the Act to regulate commerce.

And this defendant, further answering, avers that since the execution of the said agreement all the schedules aforesaid of rates, fares and charges and the rules applicable thereto, have been filed with the Managers of said Joint Traffic Association as provided in said agreement, and that the said rates, fares and charges and the rules applicable thereto are in all respects just and reasonable, have in no respects been disapproved by the said Interstate

466 Commerce Commission, and have been in all respects maintained and kept in force and effect, except that in some instances reductions of rates, fares and charges have been recommended by the said Managers of the Joint Traffic Association, and have been observed by the defendant corporations interested therein; but such reductions have been made not because the former rates were unreasonable or excessive, but for the purpose of avoiding or correcting discriminations, and securing uniformity of rates, or accommodating the changing necessities of business.

XIX.—And this defendant, further answering,
467 avers that the purpose and intention of the several railroad companies, parties to the said agreement, is honestly and fairly set forth in the body of said agreement, wherein it is provided, among other things, that the powers conferred upon the Managers of the said Joint Traffic Association shall be so construed and exercised as not to permit violation of the Interstate Commerce Act, or of any other law applicable to the premises, or any of the provisions of the charters or the laws of the companies, parties thereto, and that the Managers shall cooperate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares and charges established under the said arti-
468 cles, and also in the preamble thereof wherein it is declared that the purposes of the said agreement are to aid in fulfilling the purposes of the Interstate Commerce Act, to co-operate with each other and adjacent transportation associations, to establish and maintain reasonable and just rates, fares, rules and regulations on State and Interstate traffic, to prevent unjust discrimination and to secure the reduction and concentration of agencies and the introduction of economies in the conduct of the freight and passenger service. And further avers that it is the purpose and intention of the said Joint Traffic Association and its Board of

Control and of its Board of Managers and 469
its several officers and of the several railroad companies, parties to the said agreement, fully, fairly and honestly to carry out the purposes stated in the said agreement, and that the said association, its boards and officers, and each and all of the said railroad companies, parties to the said agreement, have no other or different purpose or intention than in the said agreement and in this answer are set forth.

And this defendant denies the existence of any purpose, contract, agreement, contrivance, combination or conspiracy, in connection with the formation of the said Joint Traffic Association, or otherwise, to unjustly or oppressively increase or 470
augment the rates or fares charged for the transportation of interstate traffic, or to counteract the effect of free competition on the facilities or prices of transportation or to establish or maintain arbitrary or unreasonable rates or to prevent any one of the railroad companies, parties to the said agreement, from reducing rates, and it denies that by the formation of the said Joint Traffic Association the rates or prices for transporting traffic on any of the lines of the companies parties to the said agreement have been, or will be, unjustly, unreasonably or oppressively, increased or augmented; and it further denies the existence in connection with the formation of the said Joint Traffic Association, or 471
otherwise, of any intention to monopolize trade, traffic or commerce among or between the States, Territories or foreign countries in the bill of complaint mentioned and referred to, or that by reason of the formation of the said Joint Traffic Association or otherwise, such trade, traffic or commerce has been in fact or can or will be monopolized.

And this defendant says that while there is no requirement of law which establishes or requires free competition in the business of transportation, it was and is the intention of each of the companies parties to the said agreement to obtain for

472 itself all of said trade, traffic and commerce possible as against all other of such companies and all outside lines.

XX.—This defendant further says that while the lines enumerated in the said agreement and in the bill of complaint as being within the purview of the said agreement are lines of transportation and communication used for interstate commerce, they are not the only lines used or capable of being used within the same transportation territory for such traffic, but that there are several other lines which can be and are used for such traffic, and over which a large amount of such traffic has been transported
473 since the said agreement went into effect.

This defendant, further answering, says that the same separate, distinctive and competitive lines of transportation and communication extending among and between the States of the United States continue to exist as before the making of the said agreement of the 19th of November, 1895.

XXI.—And this defendant further avers that the several railroad companies, parties to the said agreement, intend to continue to be engaged independently in transportation among the States and Territories of the United States and with foreign nations, and to continue in active competition with
474 each other for traffic both in freight and passengers, and to furnish to all persons engaged in such traffic or travel among the several States and Territories of the United States separate and independent and competitive lines of transportation in respect to the traffic mentioned in the bill of complaint, and further intend that all charges made for any service rendered or to be rendered in the transportation of passengers or property among the States and Territories of the United States and with foreign countries, or in connection therewith, shall be reasonable and just, and that no unjust or unreasonable or unlawful charge for such service

shall be exacted ; and that it is not the purpose or 475
intention of any of the railroad companies, parties to the said agreement, directly or indirectly, either by themselves or through any board or officer of the Joint Traffic Association, or otherwise, by any special rate, rebate, drawback, or other device, to charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of the Interstate Commerce Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially 476
similar circumstances and conditions ; and that no undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, shall be made or given, or any particular description of traffic be subjected to any undue or unreasonable preference or disadvantage in any respect whatsoever, and that each and every carrier, party to the said agreement, shall and will, according to their and each of their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from 477
their several lines and those connecting therewith, and shall not discriminate in their rates or charges between such connecting lines, and that it is the intention of the railroad companies, parties to the said agreement, and each of them, not to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, except by authority of the Interstate Commerce Commission, and that it is not the pur-

478 pose or intention of any or either of the railroad companies, parties to the said agreement, to pool freights of different and competing railroads or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion of them.

XXII.—And this defendant further says that the said agreement of the 19th of November, 1895, was duly filed with the Interstate Commerce Commission, as required by law.

And this defendant further answers that there is nothing in the said agreement contained, nor was it intended that there should be anything in its opera-
479 tion or effect, which will in any manner interfere with or tend to prevent the full performance by the companies parties thereto, respectively of all duties, imposed upon them or any of them by law, or the rendering of any service to the public which is or may be lawfully required of them or any or either of them in regard to the traffic covered by the said agreement.

XXIII.—And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on or about the 26th day of December, 1896, Wil-
480 liam R. Morrison, the Chairman of the Interstate Commerce Commission, addressed and delivered to the Attorney General of the United States a certain communication of which the following is a copy:

"INTERSTATE COMMERCE COMMISSION,
WASHINGTON, December 26, 1895.

Hon. JUDSON HARMON,
Attorney-General.

Dear Sir:

We have the honor to enclose herewith a copy of a contract, agreement, or arrangement entitled "Articles of Organization of the Joint Traffic

Association," entered into between certain common 481
carriers, corporations, named therein, forming said Joint Traffic Association, which is to take effect January 1st, 1896, and was filed with the Commission December 24, 1895. This contract, agreement, or arrangement is, we believe, in conflict with the Act to regulate commerce and cannot be carried into effect without violating the provisions of said Act.

Complying with the requirements of Section 12 of said Act, we have the honor to request that you will direct the U. S. District Attorney for the Southern District of New York or other proper jurisdiction to institute in the proper Court and prosecute under your direction all necessary proceedings, by 482
injunction or otherwise, to prevent the carrying into effect of said contract, agreement or arrangement as contemplated and provided for by said Articles of Organization, and for the punishment of all violations of said Act as the result of the formation of said Joint Traffic Association.

Respectfully,

WM. R. MORRISON,
Chairman.

But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant 483
does not know, and has not been informed, save by the allegations of the said amendment to said bill.

And this defendant further answering, says that the railroad companies, parties to the said agreement, are common carriers, engaged in transporting persons and property among the several States and Territories of the United States, and as such common carriers are subject to the provisions of the Act of Congress, approved February 4, 1887, entited "An Act to regulate Commerce," with the various amendments and supplements thereto, and

484 that the said act and amendments and supplements thereto constitute a full, adequate and comprehensive system of regulation and the sole system of regulation which has been established by Congress for railroad companies as common carriers subject to said Act; and this defendant is informed and believes, and avers that no request has been made by the said Interstate Commerce Commission, created by said Act of Congress, to the District Attorney of the United States for the Southern District of New York, to institute or prosecute under the direction of the Attorney-General of the United States, this or any proceedings against this defendant, under the said Act of
485 Congress, approved February 4, 1887, entitled "An Act to regulate Commerce," and the several acts amendatory thereof and supplementary thereto, unless the said letter, a copy whereof is hereinabove set forth, be such a request, which this defendant is advised it is not, and this defendant will claim and insist upon the same benefit and advantage of such objection and omission as fully and completely as if this defendant had demurred to the said bill of complaint.

XXIV.—And this defendant further answering says that the railroad companies, parties to the said agreement, are not nor is either of them, nor is the
486 Joint Traffic Association, nor are its Boards or officers, or any or either of them, subject to the provisions of the Act of Congress entitled, "An Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," approved July 2, 1890, and that the last mentioned act was not an amendment or modification of The Act to regulate Commerce, approved February 4, 1887, and does not relate to the business of common carriers, but has application solely to so-called trusts, industrial combinations and attempted monopolies, undertaken by persons or corporations engaged in trade, as manufacturers, miners, dealers in pro-

ducts, either in raw or manufactured state or otherwise, who carry on the actual transactions which constitute trade or commerce as distinguished from railway corporations, which are engaged in the business of transportation, and that the said agreement of November 19, 1895, does not relate to or affect any trade or commerce within the purview of the said Act, and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 487

XXV.—This defendant is advised and believes and insists that the complainant cannot in one and the same suit claim the relief prayed in said bill of complaint upon the ground that the said agreement is in violation of the said "Act to regulate Commerce," and may be restrained on the request of the Interstate Commerce Commission, and also upon the ground that the said agreement is in violation of the "Act to protect Trade and Commerce as against unlawful Restraints and Monopolies," and may be restrained on the demand of the Attorney-General, and also upon the general allegation that the said agreement is contrary to law and in violation of the rights of the citizens of the United States, and may be restrained without request or demand of any specified officer of the United States; that said alleged grounds of relief are distinct and separate, and cannot be united in the same suit; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to the said bill of complaint. 488 489

XXVI.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit or to any relief therein upon mere general allegations, such as contained in said bill, that the said agreement is unlawful, or without spe-

490 cifically alleging that it is in violation of some statute of the United States, and specifying the particular statute, and the particulars in which the said agreement is claimed to be in violation thereof; and this defendant will claim and insist upon the same benefit and advantage of this objection as fully and completely as if this defendant had demurred to the said bill of complaint.

XXVII.—And this defendant further answering says that it is advised and believes and insists that the complainant is not entitled to have or maintain its said suit, or to any relief therein, upon any allegation that the said agreement is in violation of
491 the rights of the citizens of the United States; and this defendant will claim and insist upon the same benefit and advantage of such objection as fully and completely as if this defendant had demurred to said bill of complaint.

And this defendant denies all and all manner of unlawful combination and conspiracy and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied is true to the knowledge or belief of this
492 defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct, and prays to be dismissed hence.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

[SEAL.] By E. D. WORCESTER,
Secretary.

GEO. C. GREENE,
Solicitor of the above-named Defendant,
and of Counsel.

The answer of the defendant, the Lake Shore 493
& Michigan Southern Railway Company, was taken this 21st day of March, in the year eighteen hundred and ninety-six, before me, under the common seal of the said corporation, as by their said seal affixed appears.

[SEAL] E. B. HOLBROOK,
Notary Public,
Kings Co.

Certificate filed in New York County.

STATE OF NEW YORK, }
City and County of New York, } *ss.*

494

EDWIN D. WORCESTER, being duly sworn, on his oath, saith that he is the Vice-President and Secretary of the Lake Shore & Michigan Southern Railway Company, the above-named defendant; that he has read the foregoing answer and knows its contents; that the same is true to the best of his knowledge, information and belief.

E. D. WORCESTER.

Sworn to before me this 21st }
day of March, 1896. }

[SEAL] E. B. HOLBROOK,
Notary Public,
Kings Co. 495

Certificate filed in New York County.

(Endorsed):—Circuit Court of the United States for the Southern District of New York. In Equity. The United States of America, Complainant, vs. The Joint Traffic Association, et al., Defendants.—Answer of Defendant, The Lake Shore & Michigan Southern Railway Company.—Geo. C. Greene, Solicitor for above named Defendant, 176 North St., Buffalo, N. Y.—U. S. Circuit Court, Filed Mar. 21, 1896.—John A. Shields, Clerk.

496 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, et al.

497 It is hereby stipulated that the answer of The Lake Shore and Michigan Southern Railway Company and the Pittsburg & Lake Erie Railroad Company, two of the defendants in the above-entitled cause, be amended as follows:

1. By striking out the first paragraph of Article XXIII. of the answer, and substituting in lieu thereof the following:

"And touching the allegations contained in the amendment to the bill of complaint, filed in this cause on the 9th day of March, 1896, this defendant says that it is informed and believes that on the 26th day of December, 1895, the Interstate
498 Commerce Commission made and entered on its records an order in substantially the following words:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of December, A.D. 1895.

The Commission having under consideration the Articles of Organization of the Joint Traffic Association, it was

Ordered, that the following communication, enclosing copy of said Articles of Organization, be sent to the Attorney-General of the United States":

2. By striking out at the end of the communi- 499
cation above referred to, the words:

"But whether the said communication was so addressed and delivered by the authority of the Interstate Commerce Commission, this defendant does not know, and has not been informed, save by the allegations of the said amendment to said bill."

And inserting in lieu thereof the following:

"And this defendant is informed and believes that the chairman of said Interstate Commerce Commission did accordingly, on the same day, send to the Attorney-General of the United States the letter last above set forth, and that the Attorney-General received the same.

500

And this defendant is informed and believes that thereafter, and prior to the commencement of this suit, the said Attorney-General did direct the United States Attorney for the Southern District of New York to institute all necessary proceedings to prevent the parties to said agreement from carrying the same into effect, and to have the agreement declared null and void, both on the alleged ground that said agreement appeared to be in violation of the provisions of said Act to Regulate Commerce, as amended, and also in violation of the Act of July 2, 1890, entitled: 'An Act to protect Trade and Commerce against unlawful Restraints and Monopolies,' and on all other grounds, if any, 501
by reason of which the said agreement was contrary to law or in violation of the rights of the citizens of the United States.

But this defendant denies that the said Interstate Commerce Commission ever took any other action in the premises, or ever gave the defendants herein, or any of them, any notice of any such supposed investigation or order or report, or any opportunity to be heard in respect to the matter, or any part thereof, stated in the bill of complaint in this cause.

502 And this defendant denies that said Interstate Commerce Commission ever made any order or report, as required by law, requiring the defendants herein, or any of them, to desist from putting the said agreement in operation, or from doing any or either of the things provided for in said agreement.

And it further denies that either the proceedings had and taken by said Interstate Commerce Commission, as herein admitted, or any direction given pursuant thereto, were or are legally sufficient to warrant the institution, maintenance or prosecution of this suit."

FRANK LOOMIS,
503. Solicitor for the Deft.,
The N. Y. C. & H. R. R. R. Co.

I consent to the foregoing amendments.

WALLACE MACFARLANE,
U. S. Atty.

(Endorsed):—U. S. Circuit Court, Filed Apr. 10, 1896.—John A. Shields, Clerk.

504

IN THE CIRCUIT COURT OF THE UNITED STATES 505

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

No. . Of Sessions, 189 .

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE PENNSYLVANIA RAILROAD COMPANY et al. 506

The Pennsylvania Railroad Company, the Allegheny Valley Railway Company, the Philadelphia, Wilmington and Baltimore Railroad Company, the Terre Haute and Indianapolis Railroad Company, the Grand Rapids and Indiana Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, and the Toledo, Peoria and Western Railway Company, nine of the defendants in the above-named suit, 507 now and at all times hereafter saving and reserving to themselves and to each of them all and all manner of benefit, exception, or advantage which can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in said bill of complaint, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is necessary or material for them to answer, each for itself, say :—

I. These defendants admit all the averments in the bill concerning their organization, incorpora-

508 tion, existence and places of business, save that several of these defendants exist under and by virtue of concurrent legislation in a State or States additional to the particular State mentioned in the bill.

They further admit that the Joint Traffic Association is a voluntary association organized under certain articles, of which a copy is annexed to the bill of complaint as Exhibit A, executed by the several railroad and railway companies in the bill named, on or about the nineteenth day of November, 1895. The principal place of business of said Joint Traffic Association is correctly stated in the bill.

509 But these defendants expressly deny that the said Joint Traffic Association, as constituted by said articles of agreement, is a legal entity, or capable of recognition as such; and they further deny that such association can be legally made or considered a party defendant in this proceeding, or be legally made or considered as party plaintiff or defendant in any suit or proceeding, either at law or in equity, and further deny that said association is a common carrier, or is engaged either in transportation or trade.

II. These defendants admit that all the defendant corporations are common carriers, and that at
510 the dates and times mentioned in said bill, and prior thereto, they were, and now are, engaged in the transportation of freight and passengers in the way and manner therein set forth.

III. These defendants admit that prior to the nineteenth day of November, 1895, the corporations defendant in said bill named were, as is therein averred, engaged, with their connections, in the transportation of freight and passengers, independently, among the States and Territories of the United States and with foreign nations; and that prior to said date some of the parties defendant were en-

gaged in active competition with each other for 511
such traffic, and furnished to all persons interested in such traffic or travel, separate, independent, and competitive lines of transportation.

They further aver that since that date, continuously, until the present time, such of said defendants as were previously engaged in competition have continued to be engaged in similar active competition, and to furnish to all persons engaged in such traffic and travel separate, independent, and competitive lines of transportation in respect thereto.

They further aver that all of the said defendants, parties to the said agreement, intend to continue in like manner to be engaged in such competition and furnishing of separate, independent, and competi- 512
tive lines of transportation in respect to the traffic described in said bill.

They further aver that all the companies, parties to said agreement, intend to conduct their business of transportation in accordance with the provisions of the Interstate Commerce Act, or any other law applicable to the premises and in accordance with the provisions of their charters, respectively, and to co-operate with the Interstate Commerce Commission to promote the observance of all lawful conditions.

IV. These defendants admit that on or about the nineteenth day of November, 1895, all the railroad 513
and railway corporations, parties defendant in said bill named, did enter into the agreement, of which a copy marked "Exhibit A" is attached thereto. They aver that said agreement was entered into by the parties thereto for the purposes therein recited, and for none other; that said agreement embodies truthfully, fully and completely all the undertakings and agreements concerning the matters alleged in the bill into which said railway companies entered; that no other agreement in connection with the subject matter was entered into by or between said companies; and that no purposes or

514 n tentions were entertained, or sought to be furthered, by said agreement or deducible therefrom saving those in it recited. These defendants deny all the averments in the bill, of unlawful intent, and of an intent to restrain trade and commerce among the several States, and to monopolize the same.

They were advised by counsel before the making thereof, and still are advised and therefore aver, that the intent and scope of said agreement, and of the parties who made it, was, and is, lawful.

V. These defendants deny the following specific averments of the bill:--

1. That said agreement was intended to restrain
515 and prevent competition among the railroads in respect to interstate trade and commerce.

2. That the railroad companies, parties to said agreement, intended to deprive the public engaged in interstate trade and transportation, of the facilities and advantages which the public had theretofore enjoyed from their independent competition.

3. That said companies intended to establish or maintain rates of freight and passenger transportation fixed arbitrarily, uninfluenced by competition.

4. That said railroad companies entered into a combination or conspiracy to restrain trade and commerce among the several States.

5. That said agreement was entered into in order
516 to terminate competition amongst the parties thereto for freight and passenger traffic, and that it did terminate the same.

6. That the parties to said agreement unlawfully, or in any way otherwise, pooled or combined any portion of their transportation of interstate commerce.

7. That the parties to said agreement undertook to combine their freight or to divide their earnings, or any portion thereof.

VI.—These defendants deny all the allegations in said bill contained of terms or conditions of said

agreement of the 19th of November, 1895, other 517
than those in said agreement contained. They aver that said agreement was the only one entered into by said railroad companies concerning its subject matter, and plead the terms, and the plain meaning thereof, in contradiction of the averments of said bill, that there was some other agreement, and that the agreement entered into was made with any intent or for any purpose not expressed therein.

VII.—These defendants aver that said agreement was not intended to, and did not, deprive the public engaged in interstate trade and transportation of any facilities and advantages which had been theretofore enjoyed by it from the independent com- 518
petition of said railroads. They deny that said agreement was intended to, or did, establish or maintain rates of freight and passenger transportation, fixed arbitrarily and uninfluenced by competition. They aver that on the contrary, the rates of freight and passenger transportation by said agreement adopted were those which had been theretofore fixed by the various railroad companies and posted and filed with the Interstate Commerce Commission, and were reasonable and just, and so accepted. They deny that said agreement conferred upon the board of managers the powers in said bill averred, or any powers, other than those stated therein.

These defendants deny that said agreement made 519
any surrender of competitive traffic to said association, saving to the extent, and in the way and manner, therein set forth.

VIII.—These defendants deny that by virtue of said agreement the parties thereto were subjected to any fines or penalties other than those in the agreement specified. They further deny that said fines and penalties were to be inflicted by reason of any acts other than those therein specified.

These defendants admit that the board of managers for which provision was made in said articles

520 of association has been organized in the way and manner averred in said bill; and that the parties to said agreement have put into operation the provisions thereof. They deny, however, that they entertained or entertain any unlawful purpose, or that anything by them intended to be done, or which will be done, under and by virtue of said agreement, will operate to the detriment or disadvantage of the public, or will be in violation of the law of the United States.

IX.—These defendants deny that they, or any of the parties to said agreement, intended or intend to interfere with, or in any way to restrain, any reason-
521 able or proper competition between the various companies engaged in competitive interstate commerce. They aver that all such competition will be continued, that separate, independent and competitive lines of transportation will be maintained and operated as heretofore, and that said agreement will not in anywise interfere therewith. They aver, however, that not more than about twenty per cent. of all the traffic of all the companies parties to said agreement is embraced in or would be affected by the said agreement.

They further aver that the maintenance of soliciting or contracting passenger and freight agencies intended to be abolished by the agreement involved
522 an annual expenditure approximating $4,000,000, and the abolishment of agencies will secure economy of administration accordingly, and an advantageous result both to the companies and the shippers; that because of the remoteness of these agencies from the general offices of the company, and the fact of their individual contact with the shippers when dealing directly with them with reference to rates, it had become most difficult to confine them to an observance of the provisions of the Act to regulate commerce and other laws and regulations; and their abolition in a large part and making them subordinate to the managers of the Traffic Association

was believed, and it is averred tended to an en- 523
forcement of the provisions of the said Act to regulate commerce, and in no wise violated any of the provisions of that or any other law.

These defendants aver that the sole purpose of the parties to the said agreement, in inserting the provisions therein contained relating to freight lines and agencies, was to check, to such an extent as might be lawful, the payment of commissions, and the use of such other subterfuges and secret practices and employment of such methods as had resulted, in the past, in unjust discriminations between the shippers and in detriment to the public.

X.—These defendants aver that great injury 524
would ensue to the public as the result of a failure on the part of the different companies engaged in interstate commerce to maintain reasonable and proper rates, fixed by general acquiescence in the fact of their reasonableness and propriety. Uniformity and stability in the rates of transportation are far more advantageous to the public than those cuttings of rates below what is proper and reasonable, which have terminated in the past, and, will always terminate in the future, in crippling the companies engaged in transportation, in depriving them of the ability to transport reasonably and properly, and in such uncertainty on the part of shippers as must interfere with the safe and proper 525
transaction of their business.

XI.—These defendants aver that by virtue of the agreement complained of the various parties thereto provided for the adoption, in the first instance, of rates which had been fixed upon because they were reasonable, and which has been duly filed with the Interstate Commerce Commission. By virtue of said agreement they provided a method by which these rates could, from time to time, be modified with due regard to the interest of all concerned. They reserved to each of the various par-

526 ties to the agreement, through its Board of Directors, the exercise of the power to control the rates to be by it charged in the future.

The practical effect of the provisions of said agreement relating to the powers and duties of the Board of Managers is to afford opportunity for the consideration of the reasonableness of any proposed rule or regulations by all lines interested. In case, as is usual, any proposition concerning the same shall involve discrimination or prejudice to other points or on other lines, unless corresponding changes are elsewhere made, an opportunity is afforded, under the articles, for the reduction of rates, and for changes in rules and regulations, in
527 such a way and manner as will maintain the due relations of rates each with all others, and will prevent undue preference and advantage between individuals and between cities and towns by making the reductions and changes subject to the action of the respective Boards of Directors effective at the same time by and over all lines.

And these defendants further aver that one of the practically injurious results to localities of the conditions existing before and at the time of entering into the joint traffic agreement, arose from the fact that frequently two communities, or different parts of the same community, in a large sense interdependent, were each only accessible by a
528 single line of railroad different from, and independent of, that serving the other. Unequal rates resulted, and great prejudice inured to the locality served only by the independent line charging the higher rate or furnishing inferior facilities. Uniformity of rates and equality of facilities as between such independent lines were only attainable by such harmony of action as results from the making of an association of the character established by the joint traffic agreement, by reason whereof the tendency and effect of said association is to carry out and effectuate the purposes, in this regard, of the Act to regulate commerce.

XII.—These defendants aver that so much of 529
said agreement as provided for the termination of some, or many, of the existing through co-operative and commission freight lines, resulted solely from a desire to secure economies beneficial to the companies; uniformity and equality in the facilities for transportation and the exclusion of "inside freight lines" not controlled by the companies owning and operating the railroads.

XIII.—These defendants aver that the power conferred upon the Board of Managers to determine the divisions of rates and fares between the several railroad companies was not a power conferred on said board to fix or determine rates for 530
through traffic over competing lines, but only to fix and determine the *pro rata* share or division of such established through rates or fares earned by the several railroad companies owning or operating the connecting railroads which constituted the respective through lines.

XIV.—These defendants aver that the object of the parties who entered into said agreement was to bring about a co-operation which would lead to the maintenance of reasonable and just rates, fares, rules and regulations of interstate traffic; would prevent unjust discrimination; would secure the reduction and concentration of agencies, and 531
the introduction of economies in the conduct of interstate commerce; would secure a stability and uniformity of rates which, as they are advised, was one of the leading purposes of the Interstate Commerce Act; and would insure a full, fair and honest carrying out of the purposes in said agreement set forth.

XV.—These defendants aver that the purposes of the Interstate Commerce Act will be promoted by the carrying out of the agreement complained of; and that the spirit of said Act can only properly be

carried out by conferences between the various companies engaged in said commerce, and by a concert of action resulting from such conferences.

XVI.—These defendants further aver that each of the defendant companies, parties to said agreement, is subject to the provisions of the Act to regulate commerce established by Congress for the regulation of the business of interstate transportation by rail; that the leading requirements of the said Act are, that all charges shall be reasonable and just; that all unjust discrimination shall be prohibited; and that no undue or unreasonable preference or advantages shall be given. In connection with the establishment of the aforesaid provisions, and in aid of the enforcement thereof, all common carriers subject to said Act are thereby required to establish and print schedules showing the rates, fares, and charges in force at any time for the transportation of persons and property, together with the classification of freight, and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such rates, fares and charges. These schedules they are required to file with the Interstate Commerce Commission and to post in their stations. They are prohibited from changing such schedules except after ten days' like filing and posting in case of advances, and after three days' like filing and posting in case of reductions. They are also prohibited, under heavy penalties, from charging, demanding, collecting, or receiving from any person or persons a greater or less compensation for the transportation of persons or property than is specified by the schedule in force at the time, to the end that no unjust discrimination, in the form of special rates, rebates, drawbacks, or otherwise, shall be effected in favor of any shipper. Like provisions are also made in respect to joint traffic which passes over the line of more than one railroad in the course of its transportation. Said Act

also requires that reasonable, proper, and equal 535
facilities shall be afforded for the interchange of such joint traffic.

The defendant companies, by said Act, are also required to so establish said rates, rules, regulations and classifications of freight that no person, company, firm, corporation, locality, or description of traffic shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Said requirements involve not only the determination in advance of what is a just and reasonable rate upon every article of traffic from every point to every other point over the lines of each individual carrier, and over all joint lines, but also the establishment of a vast 536
number of rules and regulations affecting the transportation of freight, which are necessary to prevent discrimination and favoritism among shippers, together with the classification which shall be employed in freight traffic, all of which must be done in such manner that no person, locality or description of traffic shall be subjected to prejudice or disadvantage in any respect whatsoever.

Concerted action between the carriers is indispensable in order to comply with the aforesaid and other provisions of the interstate commerce law. The fixing of joint rates, and of a classification of freight for general use, is obviously a matter requiring mutual agreement, and the establishment of 537
every joint rate also involves the fixing of divisions thereof. For the establishment of tariffs to and from competing points a preliminary agreement between the lines in interest is equally necessary, for the reason that unless tariffs or traffic common to two or more lines are equivalent, the business will all flow to the line or lines naming the lowest rates, and other lines will be compelled at once to make reductions in their tariffs, a process which, if pursued, will speedily reduce the rates below a just and reasonable compensation, and will lead to bankruptcies, involving either the

538 extinction of routes or their absorption by competing routes. The prohibition of preferences and advantages between localities, and in respect to particular descriptions of traffic necessarily involves a preliminary establishment of the relations proper to be maintained. Such preferences and advantages are equally disastrous and illegitimate when they exist between the tariffs of two or three different carriers as when they appear upon the tariffs of a single carrier. The provisions of the interstate commerce law constitute an absolute requirement that rates shall be fairly adjusted between localities, and between points of production and consumption of all articles, many of which
539 points are far removed from each other, and are situated upon different railroad lines. In the last-mentioned matter, which comprises by far the greater part of the work of the Joint Traffic Association, the several carriers necessarily reflect the interest of shippers upon their respective lines, each official seeking to stimulate and increase the traffic of his own road.

XVII.—These defendants are advised, and therefore aver, that under the Act to regulate commerce it was not lawful to institute this suit without the existence of certain prerequisite conditions, which conditions they aver did not exist at the time of,
540 or prior to, its institution.

These prerequisite conditions are: An investigation and determination by the Interstate Commerce Commission concerning the matter claimed to be in violation of said Act; a report in writing by said Commission in respect thereto; an entry of record of such report; the furnishing of a copy thereof to the common carrier or carriers concerned; a notice to said common carrier or carriers to cease and desist from doing what has been found by the Commission to be in violation of said Act; a failure by said common carrier or carriers to comply with such notice; and a request by said Com-

mission to the District Attorney of the United 541
States for the proper district to institute proceedings in the proper court to compel the enforcement of the provisions of said Act concerning the matter found by the Commission to be violative thereof.

These defendants are further advised, and therefore aver, that under the Act to regulate commerce this suit could not be brought excepting upon the request to the said District Attorney by the Interstate Commerce Commission after action officially taken by it concerning the subject matter of such request. They have no knowledge or information that such action was ever taken by said Interstate Commerce Commission. They therefore deny that such action was taken. 542

And these defendants further deny that the said United States Attorney for the Southern District of New York, in the institution and prosecution of said suit, has acted, or is acting, under any lawful request of the Interstate Commerce Commission. And further, these defendants deny that any such action or proceedings had been had or taken by the said Interstate Commerce Commission prior to the institution of this suit as would warrant, agreeably to the requirements of law, any request or authority to the said United States Attorney for the Southern District of New York for its institution or prosecution. And they further deny the lawful power and warrant of the Attorney-General 543
of the United States to direct said United States Attorney for the Southern District of New York to institute the same; and further deny that the said suit can be lawfully prosecuted.

XVIII.—These defendants expressly deny that they, or either of them, are engaged in trade or commerce among the several States, and aver that they are only engaged in transportation; and they likewise deny that either the said agreement mentioned in complainant's bill, or anything to be accomplished thereunder or to result therefrom, is

544 within the scope and purview of the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2d, 1890.

XIX.—These defendants deny that there can be lawfully included and united in the same bill, against the same defendants, causes of action originating by request of the Interstate Commerce Commission, acting under authority of the Act to Regulate Commerce, and its supplements, for alleged violation of said law by common carriers subject thereto; and also causes of action originating by direction of the Attorney-General of the
545 United States for alleged violations of the Act of July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

These defendants pray the same benefit and advantage of the facts and things herein set forth as if, for the reasons thereof they had either moved to dismiss or demurred to the said bill of complaint where a motion to dismiss or demurrer had been proper; and the same benefits and advantages thereof as if they had specially pleaded to said bill; and on information and belief deny every allegation in said bill of complaint not hereinbe-
546 fore admitted, answered, or denied.

Wherefore these defendants pray to be hence dismissed with all reasonable costs and charges in this behalf most wrongfully sustained.

ROBINSON, BIDDLE & WARD,
Solicitors for Defendants above named.

E. RANDOLPH ROBINSON,
JOHN G. JOHNSON,
JAMES A. LOGAN,
GEORGE F. EDMUNDS,
Of Counsel for above-named Defendants.

STATE OF PENNSYLVANIA, } ss. 547
City of Philadelphia, }

Personally appeared before me, the undersigned, a notary public in and for the city and county of Philadelphia and State of Pennsylvania, George B. Roberts, who, being duly sworn, doth depose and say that he is the president of each of the following corporations, parties to the foregoing answer, viz.: the Pennsylvania Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, and the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and that the other corporations, parties to said answer, are affiliated in interest with some 548
one or more of the said corporations whereof he is president as aforesaid; that he has read the foregoing answer and is acquainted with its contents, and that the facts set forth in the foregoing bill are correct and true so far as they were within the knowledge of this affiant, and in so far as they have been stated on advice of counsel and information he verily believes the same to be true.

Sworn and subscribed before me, this day of , A.D. 1896.

549

550 (Endorsed):—No. Of Sessions, 189 .—In the Circuit Court of the United States for the Southern District of New York. In Equity.—The United States of America vs. The Joint Traffic Association, the Pennsylvania Railroad Company, et al.—Joint and Several Answer of the Pennsylvania Railroad Company, the Allegheny Valley Railway Company, the Philadelphia, Wilmington and Baltimore Railroad Company, the Terre Haute and Indianapolis Railroad Company, the Grand Rapids and Indiana Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, and the Toledo, Peoria and Western Railway Company to the
551 Bill of Complaint.—Robinson, Biddle & Ward, Solicitors for above-named Defendants.—John G. Johnson, James A. Logan, George F. Edmunds, of Counsel for above-named Defendants.—U. S. Circuit Court, Filed Mar. 23, 1896. —John A. Shields, Clerk.

552

CIRCUIT COURT OF THE UNITED STATES 553

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE PENNSYLVANIA RAILROAD COMPANY et al.

It is hereby stipulated that the answer of The Pennsylvania Railroad Company, Allegheny Valley 554
Railway Company, Northern Central Railway Company, Pennsylvania Company, Philadelphia, Wilmington & Baltimore Railroad Company, Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, Terre Haute & Indianapolis Railroad Company, Toledo, Peoria & Western Railway Company, Grand Rapids & Indiana Railroad Company, defendants in the above-entitled cause, be amended as follows:

By adding at the end of Paragraph XVII. the words:

"These defendants admit that they have been informed since the filing of their answer in this 555
cause, and believe that on the twenty-sixth day of December, 1895, the said Interstate Commerce Commission made and entered on its records an order in substantially the following words:

"At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of December, A.D. 1895.

The Commission having under consideration the Articles of Organization of the Joint Traffic Association, it was

Ordered, that the following communication, enclosing copy of said Articles of Organization, be sent to the Attorney-General of the United States":

556 INTERSTATE COMMERCE COMMISSION.

WASHINGTON, December 26, 1895.

Hon. JUDSON HARMON,
Attorney-General.

Dear Sir:

We have the honor to enclose herewith a copy of a contract, agreement or arrangement, entitled "Articles of Organization of the Joint Traffic Association," entered into between certain common carriers, corporations, named therein, forming said Joint Traffic Association, which is to take effect January 1st, 1896, and was filed with the Commission December 24, 1895. This contract, agreement, or arrangement is, we believe, in conflict with the
557 Act to Regulate Commerce and cannot be carried into effect without violating the provisions of said Act.

Complying with the requirements of Section 12 of said Act, we have the honor to request that you will direct the U. S. District Attorney for the Southern District of New York or other proper jurisdiction to institute in the proper Court and prosecute under your direction all necessary proceedings, by injunction or otherwise, to prevent the carrying into effect of said contract, agreement or arrangement as contemplated and provided for by said Articles of Organization, and for the punishment of all violations of said Act as the result of the
558 formation of said Joint Traffic Association.

Respectfully,
WM. R. MORRISON,
Chairman.

"And these defendants are informed and believe that the chairman of said Interstate Commerce Commission did accordingly, on the same day, send to the Attorney-General of the United States the letter last above set forth, and that the Attorney-General received the same.

And these defendants are informed and believe that on the day of , 189 , the said Attor-

ney-General sent to the District Attorney of the 559
United States for the Southern District of New York the letter of W. R. Morrison, Chairman, last above set out, with instructions to institute appropriate proceedings under all existing legislation to have said contract declared void, and the parties thereto restrained from carrying out the same.

But these defendants deny that the said Interstate Commerce Commission ever took any other action whatever in the premises, or ever gave these defendants, or any of them, any notice of any such supposed investigation or order or report, or any opportunity to be heard in respect of the matter, or any part thereof, stated in the Bill of Com- 560
plaint in this cause.

And these defendants deny that said Interstate Commerce Commission ever made any order or report, as required by law, requiring these defendants, or any of them, to desist from putting the said agreement in operation, or from doing either, or any, of the things provided for in said agreement.

And they further deny that either the proceedings had and taken by said Interstate Commerce Commission, as herein admitted, or any direction given pursuant thereto, were or are legally sufficient to warrant the institution, maintenance or prosecution of this suit."

Dated, New York City, April 10, 1896. 561

WALLACE MACFARLANE,
U. S. Attorney.

ROBINSON, BIDDLE & WARD,
Solicitors for said Defendants.

(Endorsed):—U. S. Circuit Court, S. D. N. Y.—United States, Plff., vs. Joint Traffic Association, Pennsylvania R. R. Co. et al., Defts.—Amendment to Answer.—Robinson, Biddle & Ward, Solicitors for P. R. R.—U. S. Circuit Court, Filed Apr. 13, 1896.—John A. Shields, Clerk.

562 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

No. . Of Sessions, 189 .

THE UNITED STATES OF AMERICA,

vs.

563 THE JOINT TRAFFIC ASSOCIATION, THE PENNSYLVANIA RAILROAD COMPANY et al.

The separate answer of the Lehigh Valley Railroad Company, one of the defendants, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit, exception, or advantage which can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in said bill of complaint, for answer thereunto, or unto so much
564 or such parts thereof as this defendant is advised is necessary or material for it to answer, says:

I.—This defendant admits all the averments in the bill concerning its organization, incorporation, existence and place of business.

It further admits that the Joint Traffic Association is a voluntary association organized under certain articles, of which a copy is annexed to the bill of complaint as Exhibit A, executed by the several railroad and railway companies in the bill named, on or about the nineteenth day of November, 1895, and that the principal place of business of said

Joint Traffic Association is in the City of New 565
York.

But this defendant expressly denies that the said Joint Traffic Association, as constituted by said articles of agreement, is incorporated either by special charter or by public statute, and denies that it is a legal entity, or capable of recognition as such; and it further denies that such association can be legally made or considered a party defendant in this proceeding, or be legally made or considered as party plaintiff or defendant in any suit or proceeding, either at law or in equity; and it denies that said Association is a common carrier, or engaged in the transportation of freight or passengers, or engaged in trade or commerce of any 566
description whatever.

II.—This defendant admits that all the railroad companies defendants are common carriers, incorporated in the way and manner in said bill set forth; and that at the dates and times mentioned in said bill, and prior thereto, they were, and now are, engaged in the transportation of freight and passengers in the way and manner therein set forth.

III.—This defendant admits that prior to the nineteenth day of November, 1895, the corporations defendant in said bill were, as is therein averred, 567
engaged, with their connections, not in trade, but in the transportation of freight and passengers, independently, among the States and Territories of the United States and with foreign nations; and that prior to said date some of the parties defendant were engaged in active competition with each other for such traffic, and furnished to all persons interested in such traffic or travel, separate, independent and competitive lines of transportation.

It further avers that since that date, continuously, until the present time, such of said defendants as were previously engaged in compe-

568 tition have continued to be engaged in similar active competition and to furnish to all persons engaged in such traffic and travel separate, independent and competitive lines of transportation in respect thereto.

It further avers that all of the said defendants, parties to the said agreement, intend to continue in like manner to be engaged in such competition and furnishing of separate, independent and competitive lines of transportation in respect to the traffic described in said bill.

It further avers that all the companies, parties to said agreement, intend to conduct their business of transportation in accordance with the provis-
569 ions of the Interstate Commerce Act, or any other law applicable to the premises and in accordance with the provisions of their charters, respectively, and to co-operate with the Interstate Commerce Commission to promote the observance of all lawful conditions.

IV.—This defendant admits that on or about the nineteenth day of November, 1895, all the railroad and railway corporations, parties defendant in said bill named, did enter into the agreement, of which a copy, marked "Exhibit A," is attached thereto. It avers that said agreement was entered into by the parties thereto for the purposes therein
570 recited, and for none other; that said agreement embodies truthfully, fully, and completely all the undertakings and agreements concerning the matters alleged in the bill into which said railway companies entered; that no other agreement in connection with the subject matter was entered into by or between said companies; and that no purposes or intentions were entertained, or sought to be furthered, by said agreement or deducible therefrom saving those in it recited. This defendant denies all the averments in the bill, of unlawful intent, and of an intent to restrain trade and commerce among the several States, and to monopolize the same.

It was advised by counsel before the making 571
thereof, and still is advised and therefore avers, that the intent and scope of said agreement, and the intent of the parties who made it, were, and are, lawful.

V.—This defendant denies the following specific averments of the bill:

1. That said agreement was intended to restrain and prevent competition among the railroads in respect to interstate trade and commerce.

2. That the railroad companies, parties to said agreement, intended to deprive the public engaged in interstate trade and transportation of the facilities and advantages which the public had thereto- 572
fore enjoyed from their independent competition.

3. That said companies intended to establish or maintain rates of freight and passenger transportation fixed arbitrarily, uninfluenced by competition.

4. That said railroad companies entered into a combination or conspiracy to restrain trade and commerce among the several States.

5. That said agreement was entered into in order to terminate competition amongst the parties thereto for freight and passenger traffic, and that it did terminate the same.

6. That the parties to said agreement unlawfully, or in any way otherwise, pooled or combined any 573
portion of their transportation of interstate commerce.

7. That the parties to said agreement undertook to combine their freight or to divide their earnings, or any portion thereof.

VI.—This defendant denies all the allegations in said bill contained, of terms or conditions of said agreement of the 19th of November, 1895, other than those in said agreement contained. It avers that said agreement was the only one entered into by said railroad companies, concerning its subject

matter, and pleads the terms, and the plain meaning thereof, in contradiction of the averments of said bill, that there was some other agreement, and that the agreement entered into was made with any intent or for any purpose not expressed therein.

VII.—This defendant avers that said agreement was not intended to, and did not, deprive the public engaged in interstate trade and transportation of any facilities and advantages which had been theretofore enjoyed by it from the independent competition of said railroads. It denies that said agreement was intended to, or did, establish or maintain rates of freight and passenger transportation, fixed arbitrarily and uninfluenced by competition. It avers that, on the contrary, the rates of freight and passenger transportation by said agreement adopted were those which had been theretofore fixed by the various railroad companies, and posted and filed with the Interstate Commerce Commission, and were reasonable and just, and so accepted. It denies that said agreement conferred upon the Board of Managers the powers in said bill averred, or any powers, other than those stated therein.

This defendant denies that said agreement made any surrender of competitive traffic to said association, saving to the extent, and in the way and manner, therein set forth.

VIII.—This defendant denies that by virtue of said agreement the parties thereto were subjected to any fines or penalties, other than those in the agreement specified. It further denies that said fines and penalties were to be inflicted by reason of any acts other than those therein specified.

This defendant admits that the Board of Managers for which provision was made in said articles of association has been organized in the way and manner averred in said bill, and that the

parties to said agreement have put into operation 577
the provisions thereof. It denies, however, that they entertained or entertain any unlawful purpose, or that anything by them intended to be done, or which will be done, under and by virtue of said agreement, will operate to the detriment or disadvantage of the public, or will be in violation of the law of the United States.

IX.—This defendant denies that it or any of the parties to said agreement intended or intend to interfere with, or in any way to restrain, any reasonable or proper competition between the various companies engaged in competitive interstate commerce. It avers that all such competition will be 578
continued, and that said agreement will not in anywise interfere therewith. It avers, however, that not more than about 20 per cent. of all the traffic of all the companies parties to said agreement is embraced in or would be affected by the said agreement.

It further avers that the maintenance of soliciting or contracting passenger and freight agencies intended to be abolished by the agreement involved an annual expenditure approximating $4,000,000, and the abolishment of agencies will secure economy of administration accordingly, and an advantageous result both to the companies and the shippers; that because of the remoteness of these agencies 579
from the general offices of the company, and the fact of their individual contact with the shippers when dealing directly with them with reference to rates, it had become most difficult to confine them to an observance of the provisions of the Act to regulate commerce and other laws and regulations; and their abolition in large part, and making them subordinate to the managers of the Traffic Association were believed, and it is averred, tended to an enforcement of the provisions of the said Act to regulate commerce, and in nowise violated any of the provisions of that or any other law.

580 This defendant avers that the sole purpose of the parties to the said agreement, in inserting the provisions therein contained relating to freight lines and agencies, was to check, to such an extent as might be lawful, the payment of commissions, and the use of such other subterfuges and secret practices and employment of such methods as had resulted, in the past, in unjust discrimination between the shippers and in detriment to the public.

X.—This defendant avers that great injury would ensue to the public, as the result of a failure on the part of the different companies engaged in interstate commerce to maintain reasonable and proper
581 rates, fixed by general acquiescence in the fact of their reasonableness and propriety. Uniformity and stability in the rates of transportation are far more advantageous to the public than those cuttings of rates below what is proper and reasonable, which have terminated in the past, and will always terminate in the future, in crippling the companies engaged in transportation, in depriving them of the ability to transport reasonably and properly, and in such uncertainty on the part of shippers as must interfere with the safe and proper transaction of their business.

XI.—This defendant avers that by virtue of the
582 agreement complained of, the various parties thereto provided for the adoption, in the first instance, of rates which had been fixed upon because they were reasonable, and which had been duly filed with the Interstate Commerce Commission. By virtue of said agreement they provided a method by which these rates could, from time to time, be modified with due regard to the interests of all concerned. They reserved to each of the various parties to the agreement, through its board of directors, the exercise of the power to control the rates to be by it charged in the future.

The practical effect of the provisions of said 583
agreement relating to the powers and duties of the board of managers is to afford opportunity for the consideration of the reasonableness of any proposed rule or regulations by all lines interested. In case, as is usual, any proposition concerning the same shall involve discrimination or prejudice to other points or on other lines, unless corresponding changes are elsewhere made, an opportunity is offered, under the articles, for the reduction of rates, and for changes in rules and regulations, in such a way and manner as will maintain the due relations of rates each with all others, and will prevent undue preference and advantage between individuals and between cities and towns by making the reduc- 584
tions and changes (subject to the action of the respective boards of directors) effective at the same time by and over all lines.

And this defendant further avers that one of the practically injurious results to localities of the conditions existing before and at the time of entering into the joint traffic agreement arose from the fact that frequently two communities, or different parts of the same community, in a large sense interdependent, were each only accessible by a single line of railroad different from, and independent of, that serving the other. Unequal rates resulted, and great prejudice inured to the localities served only by the independent line charging the higher rate or 585
furnishing inferior facilities. Uniformity of rates and equality of facilities as between such independent lines were only attainable by such harmony of action as results from the making of an association of the character established by the joint traffic agreement, by reason whereof the tendency and effect of said association is to carry out and effctuate the puposes, in this regard, of the act to regulate commerce.

XII.—This defendant avers that so much of said agreement as provided for the termination of some,

586 or many, of the existing through co-operative and commission freight lines, resulted solely from a desire to secure economies beneficial to the companies, uniformity and equality in the facilities for transportation, and the exclusion of "inside freight lines" not controlled by the companies owning and operating the railroads.

XIII.—This defendant avers that the power conferred upon the board of managers to determine the divisions of rates and fares between the several railroad companies was not a power conferred on said board to fix or determine rates for through traffic over competing lines, but only to fix
587 and determine the *pro rata* share or division of such established through rates or fares earned by the several railroad companies owning or operating the connecting railroads which constituted the respective through lines.

XIV.—This defendant avers that the object of the parties who entered into said agreement was to bring about a co-operation which would lead to the maintenance of reasonable and just rates, fares, rules and regulations of interstate traffic; would prevent unjust discrimination; would secure the reduction and concentration of agencies, and the introduction of economies in the conduct of
588 interstate commerce; would secure a stability and uniformity of rates which, as they are advised, was one of the leading purposes of the Interstate Commerce Act; and would insure a full, fair and honest carrying out of the purposes in said agreement set forth.

XV.—This defendant avers that the purposes of the Interstate Commerce Act will be promoted by the carrying out of the agreement complained of; and that the spirit of said Act can only properly be carried out by conferences between the various companies engaged in said commerce, and by a concert of action resulting from such conferences.

XVI.—This defendant further avers that each of 589
the defendant companies, parties to said agreement, is subject to the provisions of the Act to regulate commerce established by Congress for the regulation of the business of interstate transportation by rail; that the leading requirements of the said Act are that all charges shall be reasonable and just, that all unjust discrimination shall be prohibited, and that no undue or unreasonable preference or advantages shall be given. In connection with the establishment of the aforesaid provisions, and in aid of the enforcement thereof, all common carriers subject to said Act are thereby required to establish and print schedules showing the rates, fares and charges in force at any time for the transportation 590
of persons and property, together with the classification of freight, and any rules or regulations which in anywise change, affect or determine any part of the aggregate of such rates, fares and charges. These schedules they are required to file with the Interstate Commerce Commission and to post in their stations. They are prohibited from changing such schedules except after ten days' like filing and posting in case of advances, and after three days' like filing and posting in case of reductions. They are also prohibited, under heavy penalties, from charging, demanding, collecting or receiving from any person or persons a greater or less compensation for the transportation 591
of persons or property than is specified by the schedule in force at the time, to the end that no unjust discrimination, in the form of special rates, rebates, drawbacks or otherwise, shall be effected in favor of any shipper. Like provisions are also made in respect to joint traffic which passes over the line of more than one railroad in the course of its transportation. Said act also requires that reasonable, proper and equal facilities shall be afforded for the interchange of such joint traffic.

The defendant companies, by said Act, are also required to so establish said rates, rules, regula-

592 tions and classifications of freight that no person, company, firm, corporation, locality or description of traffic shall be subject to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Said requirements involve not only the determination in advance of what is a just and reasonable rate upon every article of traffic from every point to every other point over the lines of each individual carrier, and over all joint lines, but also the establishment of a vast number of rules and regulations affecting the transportation of freight, which are necessary to prevent discrimination and favoritism among shippers, together with the classification which shall
593 be employed in freight traffic, all of which must be done in such manner that no person, locality or description of traffic shall be subjected to prejudice or disadvantage in any respect whatsoever.

Concerted action between the carriers is indispensable in order to comply with the aforesaid and other provisions of the interstate commerce law. The fixing of joint rates, and of a classification of freight for general use, is obviously a matter requiring mutual agreement, and the establishment of every joint rate also involves the fixing of divisions thereof. For the establishment of tariffs to and from competing points a preliminary agreement between the lines in interest is equally neces-
594 sary, for the reason that unless tariffs for traffic common to two or more lines are equivalent, the business will all flow to the line or lines naming the lowest rates, and other lines will be compelled at once to make reductions in their tariffs, a process which, if pursued, will speedily reduce the rates below a just and reasonable compensation, and will lead to bankruptcies, involving either the extinction of routes or their absorption by competing routes. The prohibition of preferences and advantages between localities, and in respect to particular descriptions of traffic necessarily involves a preliminary establishment of the relations

proper to be maintained. Such preferences and 595
advantages are equally disastrous and illegitimate when they exist between the tariffs of two or three different carriers as when they appear upon the tariffs of a single carrier. The provisions of the interstate commerce law constitute an absolute requirement that rates shall be fairly adjusted between localities, and between points of production and consumption of all articles, many of which points are far removed from each other, and are situated upon different railroad lines. In the last-mentioned matter, which comprises practically all of the work of the Joint Traffic Association, the several carriers necessarily reflect the interest of shippers upon their respective lines, 596
each official seeking to stimulate and increase the traffic of his own road.

XVII.—These defendants are advised, and therefore aver, that under the Act to regulate commerce it was not lawful to institute this suit without the existence of certain prerequisite conditions, which conditions they aver did not exist at the time of, or prior to, its institution.

These prerequisite conditions are: An investigation and determination by the Interstate Commerce Commission concerning the matter claimed to be in violation of said Act; a report in writing by said Commission in respect thereto; an entry 597
of record of such report; the furnishing of a copy thereof to the common carrier or carriers concerned; a notice to said common carrier or carriers to cease and desist from doing what has been found by the Commission to be in violation of said Act; a failure by said common carrier or carriers to comply with such notice; and a request by said Commission to the District Attorney of the United States for the proper district to institute proceedings in the proper court to compel the enforcement of the provisions of said Act concerning the matter found by the Commission to be violative thereof.

598 These defendants are further advised, and therefore aver, that under the Act to regulate commerce this suit could not be brought excepting upon the request to the said District Attorney by the Interstate Commerce Commission after action officially taken by it concerning the subject matter of such request. They have no knowledge or information that such action was ever taken by said Interstate Commerce Commission. They therefore deny that such action was taken.

And these defendants further deny that the said United States Attorney for the Southern District of New York, in the institution and prosecution of said suit, has acted, or is acting, under any lawful
599 request of the Interstate Commerce Commission. And further, these defendants deny that any such action or proceedings had been had or taken by the said Interstate Commerce Commission prior to the institution of this suit as would warrant, agreeably to the requirements of law, any request or authority to the said United States Attorney for the Southern District of New York for its institution or prosecution. And they further deny the lawful power and warrant of the Attorney-General of the United States to direct said United States Attorney for the Southern District of New York to institute the same; and further deny that the said suit can be lawfully prosecuted.

600

XVIII.—And this defendant, further answering, says that the railroad companies parties to the said agreement are not, nor is either of them, nor is the Joint Traffic Association, nor are its boards or officers, or any or either of them, subject to the provisions of the Act of Congress entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2d, 1890, and that the last-mentioned Act was not an amendment or modification of the Act to regulate commerce, approved February 4th, 1887, and does not relate to the business of common carriers, but has

application solely to so-called trusts, industrial combinations, and attempted monopolies undertaken by persons or corporations engaged in trade as manufacturers, producers or dealers, who carry on the actual transactions which constitute trade or commerce, as distinguished from railway corporations, which are engaged in the business of transportation, and that the said agreement of November 19th, 1895, does not relate to or affect any trade or commerce within the purview of the said Act. 601

XIX.—And this defendant, further answering, says that it is advised, and therefore avers, that there cannot be lawfully included and united in the same bill of complaint causes of action originating or alleged to originate by reason of alleged violation of the provisions of the aforesaid "Act to regulate commerce" and its supplements, and causes of action originating or alleged to originate by reason of alleged violation of the provisions of the aforesaid "Act to protect trade and commerce against unlawful restraints and monopolies." 602

This defendant prays the same benefit and advantage of the facts and things herein set forth as if, for reason thereof it had demurred to said bill of complaint where a demurrer had been proper; and the same benefits and advantages thereof as if it had specially pleaded to said bill; and on information and belief denies every allegation in said bill of complaint not hereinbefore admitted, answered, or denied. 603

604 Wherefore this defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LEHIGH VALLEY RAILROAD COMPANY,

SEAL Lehigh Valley Railroad Company.

By

E. P. WILBUR,
President.

Attest:

JNO. R. FANSHAWE,
Secretary.

ALEXANDER & GREEN,
605 Solicitors for Defendant above-named.

JOHN G. JOHNSON,
C. B. ALEXANDER,
FRANCIS I. GOWEN,
Of Counsel.

606

The answer of the defendant, the Lehigh Valley Railroad Company, was taken this twenty-third day of March, in the year 1896, before me, under the common seal of the said corporation, as by their said seal affixed appears. 607

EDWARD Y. HARTSHORNE,
[Notarial Seal.] Notary Public.

STATE OF PENNSYLVANIA, } ss.
County of Philadelphia, }

E. P. WILBUR, being duly sworn according to law, deposes and says that he is the President of the Lehigh Valley Railroad Company, the defendant above-named, and that the allegations of the foregoing answer of said defendant so far as they are therein stated of his own knowledge are true, and so far as therein stated upon information and belief he believes them to be true. 608

E. P. WILBUR.

Sworn and subscribed before me, this twenty-third day of March, 1896. Witness my hand and notarial seal.

EDWARD Y. HARTSHORNE,
[Notarial Seal.] Notary Public. 609

(Endorsed):—No. Of Sessions, 189 .—In the Circuit Court of the United States for the Southern District of New York. In Equity.—The United States of America vs. The Joint Traffic Association, the Pennsylvania Railroad Company, et al.—Separate Answer of the Lehigh Valley Railroad Company.—Alexander & Green, Solicitors for above-named Defendant.—John G. Johnson, C. B. Alexander, Francis I. Gowen, of Counsel for above-named Defendant.—U. S. Circuit Court, Filed Mar. 24, 1896.—John A. Shields, Clerk.

610 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, THE LEHIGH VALLEY RAILROAD COMPANY et al.

611

It is hereby stipulated that the answer of the defendant, the Lehigh Valley Railroad Company, be amended as follows:

By adding at the end of Paragraph XVII. of said answer, the following:

"This defendant admits that it has been informed since the filing of its answer in this cause, "and believes, that on the twenty-sixth day of "December, 1895, the said Interstate Commerce "Commission made and entered on its records an "order in substantially the following words:

612 "'At a General Session of the Interstate Com- "'merce Commission, held at its office in Wash- "'ington, D. C., on the 26th day of December, "'A. D. 1895.

"'The Commission having under consideration "'the Articles of Organization of the Joint Traffic "'Association, it was ordered that the following "'communication, enclosing a copy of said Articles "'of Organization, be sent to the Attorney-General "'of the United States:

" ' INTERSTATE COMMERCE COMMISSION, 613
" ' WASHINGTON, December 26, 1895.

" ' Hon. JUDSON HARMON,
Attorney General.

" ' Dear Sir:

" ' We have the honor to enclose herewith a copy
" ' of a contract, agreement or arrangement entitled,
" ' ARTICLES OF ORGANIZATION OF THE JOINT
" ' TRAFFIC ASSOCIATION, entered into between cer-
" ' tain common carriers, corporations named there-
" ' in, forming said Joint Traffic Association, which
" ' is to take effect January 1st, 1896, and was filed
" ' with the Commission December 24th, 1895.
" ' This contract, agreement or arrangement is, we
" ' believe, in conflict with the Act to Regulate 614
" ' Commerce, and cannot be carried into effect
" ' without violating the provisions of said Act.

" ' Complying with the requirements of Section
" ' 12 of said Act, we have the honor to request
" ' that you will direct the U. S. District Attorney
" ' for the Southern District of New York, or
" ' other proper jurisdiction, to institute in the
" ' proper court and prosecute under your direc-
" ' tion, all necessary proceedings, by injunction or
" ' otherwise, to prevent the carrying into effect of
" ' said contract, agreement or arrangement as con-
" ' templated and provided for by said Articles of
" ' Organization, and for the punishment of all vio-
" ' lations of said Act as the result of the formation 615
" ' of said Joint Traffic Association.' "

Respectfully,

WM R. MORRISON,
Chairman.

"And this defendant is informed and believes
"that the Chairman of said Interstate Commerce
"Commission did accordingly, on the same day,
"send to the Attorney General of the United States
"the letter last above set forth, and that the At-
"torney General received the same.

616 "And this defendant is informed and believes
"that on the day of , 189 , the said At-
"torney General sent to the District Attorney of
"the United States for the Southern District of
"New York, the letter of W. R. Morrison, Chair-
"man, last above set out, with instructions to insti-
"tute appropriate proceedings under all existing
"legislation to have said contract declared void,
"and the parties thereto restrained from carrying
"out the same.

"But this defendant denies that the said Inter-
"state Commerce Commission ever took any other
"action whatever in the premises, or ever gave
"this defendant any notice of any such supposed
617 "investigation, or order or report, or any oppor-
"tunity to be heard in respect of the matter or any
"part thereof, stated in the Bill of Complaint in
"this cause.

"And this defendant denies that said Interstate
"Commerce Commission ever made any order or
"report, as required by law, requiring this defend-
"ant to desist from putting the said agreement
"in operation, or from doing either or any of the
"things provided for in said agreement.

"And it further denies that either the proceed-
"ings had and taken by said Interstate Commerce
"Commission as herein admitted, or any direction
"given pursuant thereto, were or are legally suffi-
618 "cient to warrant the institution, maintenance or
"prosecution of this suit."

ALEXANDER & GREEN,
Solrs. for Deft., L. V. R. R.

I consent to the foregoing amendments.

WALLACE MACFARLANE,
U. S. Atty.

(Endorsed):—U. S. Circuit Court, Southern Dist. of New York.—The United States of America vs. The Joint Traffic Association, The Lehigh Valley Railroad et al.—Stipulation Amending Answer.—U. S. Circuit Court, Filed Apr. 11, 1896.—John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT, 619
SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, et al.

It is stipulated and agreed between the parties to this stipulation, that in preparing the Record on Appeal herein, the Clerk of the Court shall include 620
in the record the answer as amended, filed by the Lake Shore and Michigan Southern Railway Company, one of the defendants herein, and shall omit the answer as amended of the Pittsburg and Lake Erie Railroad Company; and it is agreed for the purposes of this appeal that the Pittsburg and Lake Erie Railroad Company filed an amended answer under its corporate seal and verified by one of its principal officers, identical in form and effect with that filed by the said Lake Shore and Michigan Southern Railway Company.

It is further agreed that the Record thus constituted shall have the same force and effect as if the answer as amended, of each of the defendants here- 621
in named, had been included in the Record.

September 19, 1896.

WALLACE MACFARLANE,
U. S. Attorney,
Attorney for Plaintiff.

GEO. C. GREENE,
Atty. for Lake Shore & Michigan Southern Railway Co., and Pittsburg & Lake Erie R. R. Co.

(Endorsed):—U. S. Circuit Court, filed Sept. 19, 1896.—John A. Shields, Clerk.

622 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

vs.

THE JOINT TRAFFIC ASSOCIATION, et al.

It is stipulated and agreed between the parties to
623 this stipulation, that in preparing the Record on Appeal herein, the Clerk of the Court need include in the record only a copy of the answer as amended, filed by the Joint Traffic Association, and a copy of the amended answer of the New York Central & Hudson River Railroad Company, one of the defendants herein; and that it is agreed for the purposes of this appeal that the Delaware, Lackawanna & Western R. R. Co., the Lake Shore & Michigan Southern Railroad Co., the Pittsburg & Lake Erie Railroad Company, the Central Railroad of New Jersey, the Wabash Railroad Company, the Chesapeake & Ohio Railway Co., the Cleveland, Cincinnati, Chicago & St. Louis Railway Co., the
624 Erie Railroad Company, the Chicago & Erie Railroad Co., the West Shore Railroad Co., the New York, Ontario & Western Railway Co., the Michigan Central Railroad Co., the New York, Chicago & St. Louis Railroad Co., the Grand Trunk Railway Co. of Canada, the Chicago & Grand Trunk Railroad Co., the Detroit, Grand Haven & Milwaukee Railway Co., the Baltimore & Ohio Railroad Co., the Baltimore & Ohio Southwestern Railway Co., and the Pittsburg & Western Railway Co., each filed an amended answer under its corporate seal and verified by one of its principal officers, identical in form and effect with that filed by the

New York Central & Hudson River Railroad Company, hereinbefore mentioned. 625

It is further agreed that the Record thus constituted shall have the same force and effect as if the answer as amended of each of the defendants herein named, had been included in the Record.

September 5, 1896.

WALLACE MACFARLANE,
U. S. Attorney,
Attorney for the Plaintiff.

CARTER & LEDYARD,
Attys. for The Joint Traffic Association. 626

HAMILTON ODELL,
Atty. for Delaware, Lackawanna & Western R. R. Co.

Atty. for Lake Shore & Michigan Southern R. R. Co., and Pittsburg & Lake Erie R. R. Co.

DE FOREST BROTHERS,
Attys. for Central R. R. Co. of New Jersey.

W. H. BLODGETT & CLARENCE D. ASHLEY,
Attys. for Wabash R. R. Co. 627

FRANK LOOMIS,
Sol. for New York Central & Hudson River R. R. Co.
By ASHBEL GREEN.

STETSON, TRACY, JENNINGS & RUSSELL,
Attys. for Chesapeake & Ohio R'y Co., Cleveland, Cincinnati, Chicago, & St. Louis R'y Co., Erie R. R Co., Chicago & Erie R. R. Co.

628 ASHBEL GREEN,
Solicitor for West Shore R. R. Co., New York, Ontario & Western R. R. Co., Michigan Central R. R. Co., New York, Chicago & St. Louis R. R. Co., Grand Trunk R'y Co. of Canada, Chicago & Grand Trunk R'y Co., Detroit, Grand Haven & Milwaukee R'y Co.

E. J. D. CROSS.
HUGH L. BOND, Jr.,
Solicitors for Baltimore & Ohio R. R. Co., Baltimore & Ohio Southwestern
629 R'y Co., Pittsburg & Western R'y Co.

(Endorsed):—U. S. Circuit Court, Filed Sep. 18, 1896. John A. Shields, Clerk.

630

UNITED STATES CIRCUIT COURT, 631

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES, *vs.* JOINT TRAFFIC ASSOCIATION.	In Equity.

The Interstate Commerce Law, 24 Stat., 379, provides:

"Sec. 5. That it shall be unlawful for any common carrier, subject to the provisions of this act, to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offence." 632

The Act of 1890 against unlawful restraints and monopolies, 26 Stat., 209, provides:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared illegal." 633

The thirty-two railroad companies defendants, immensely engaged in competitive interstate commerce, have made an arrangement forming this Joint Traffic Association, with a board of nine managers, consisting of one each from the Baltimore & Ohio, Chesapeake & Ohio, Erie, Grand Trunk, Lackawanna, Lehigh Valley, Pennsylvania, Vander-

634 bilt and Wabash systems; and with jurisdiction over competitive traffic which passes to, from or through the western termini of the Trunk Lines, viz.: Toronto, Can.; Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk and Salamanca, N. Y.; Erie, Pittsburg and Allegheny, Pa.; Bellaire, O.; Wheeling, Parkersburg, Charleston and Kenova, W. Va., and Ashland, Ky.; and such other points as may hereafter be designated by the Managers as such termini.

The arrangement provides as to rates, fares, charges and rules.

635 Article Seven:

"Section 1. The duly published schedules of rates, fares and charges, and the rules applicable thereto now in force and authorized by the companies parties hereto upon the traffic covered by this agreement (and filed with the Interstate Commerce Commission as to such of said traffic as is interstate), are hereby reaffirmed by the companies composing the Association, and the companies parties hereto shall, within ten days after this agreement becomes effective, file with the managers copies of all such schedules of rates, fares and charges, and the rules applicable thereto.

636 "Section 2. The Managers shall from time to time recommend such changes in said rates, fares, charges and rules as may be reasonable and just, and necessary for governing the traffic covered by this agreement and for protecting the interests of the parties hereto therein, and the failure to observe such recommendations by any party hereto as and when made, shall be deemed a violation of this agreement. No company, party hereto shall, through any of its officers or agents, deviate from or change the rates, fares charges or rules herein reaffirmed or so recommended by the Managers, except by a resolution of its Board. The action of

such Board shall not effect the rates, fares, charges 637
or rules disapproved except to the extent of its interest therein over its own road. A copy of the resolution of the Board of any company party hereto, authorizing any such change shall be immediately forwarded by the company making the same, to the Managers, and such change shall not become effective until thirty days after the receipt of such resolution by the Managers. The Managers, upon receiving such notice, shall act promptly upon the same for the protection of the parties hereto.

"Section 3. The powers conferred upon the Managers shall be so construed and exercised as not to permit violation of the Interstate Commerce Act or any other law applicable to the premises, or 638
any provision of the charters or the laws applicable to any of the companies parties hereto, and the Managers shall co-operate with the Interstate Commerce Commission to secure stability and uniformity in the rates, fares, charges and rules, established hereunder."

It also provides as to competitive traffic.

Article Eight:

"The Managers are charged with the duty of securing to each company party hereto, equitable proportions of the competitive traffic covered by this Agreement, so far as can be legally done; and 639
the control of all persons acting as contracting and soliciting freight and passenger agents in relation to the traffic covered, with due regard to the relative interests involved; and the number of such persons to be employed, is given to the Managers."

This bill is brought at the request of the Interstate Commerce Commission, under the direction of the Attorney General, by the District Attorney of the United States for this district, against this agreement, as made, without counting upon any statutes, or alleging anything actually done under

640 it to be of itself unlawful otherwise than because so done. The answer denies, as a conclusion, any illegality within or under the agreement; and, as a matter of fact, anything unlawful outside of or beyond it. The case has been heard upon the bill and answer, and so is made to turn upon the question of the legality or illegality of the contract, and upon the right of the United States as plaintiff to maintain this suit, if it is illegal. The provisions of the contract stated are understood to be the ones challenged as being contrary to the statutes quoted.

The restraint and monopoly Act expressly authorizes such a proceeding in equity as this to prevent its violation, and this suit is well maintained if
641 this contract is within it. Railroads are not expressly named in this Act, and are said in argument not to be within its terms. No one is so named; but it applies to all contracts and combinations in restraint of trade or commerce among the States. Railroads do not trade among the States, but they carry for those who do; and what would restrain their so carrying would seem to be a restraint of such commerce.

These provisions of the contract do not provide for lessening the number of carriers; nor their facilities; nor for raising their rates, except expressly by its terms not contrary to law, and therefore not beyond what are reasonable. The Interstate
642 Commerce Law, Section 1, requires all rates to be reasonable, and the making of reasonable and lawful rates upon carriage in any traffic cannot be any restraint in law upon such traffic. U. S. *vs.* Trans-Missouri Freight Association, 53 Fed. Rep., 440; 58 Fed. Rep., 58. The soliciting of custom is no part of the duty of common carriers, and dispensing with soliciting agents or with the control of them cannot be illegal, nor an agreement to do so be an illegal contract. As this case rests wholly upon the contract as made, and not upon anything actually done under color of, or beyond it, and each road is

left by it to carry on its own business within lawful limits as before, no unlawful restraint of commerce seems to be provided for by it; and no ground for relief under that statute of 1890 is made out. 643

No provision is made by the Interstate Commerce Law for enforcing its provisions in equity, except to carry out orders of the Commission; and authority for this suit to restrain any violation of that law, must appear otherwise, or fail. That Governments and States exercising general municipal control over the people, their property, their rights and their convenience may, by their law officers, maintain suits in equity to restrain actual nuisances to ways, parks, commons, and the like, which are injurious to the common rights of all to their enjoyment, is not to be questioned. The United States Government is limited in such control to such particular subjects as are committed to it, which include, of course, interstate and foreign commerce, carrying the mails, and such. These railroads are not federal instruments, although they may be and probably are engaged in the business of, and are within control of the laws of, the government to some extent. As so engaged no nuisance would be federal till it should become actual by obstructing these functions. *In re* Debs, 58 U. S., 564. This contract, if illegal, is intangible, and is not alleged, or claimed, to have obstructed the roads for government purposes in any manner whatever. 644 645

The United States may maintain a bill in equity to repeal a patent for land, U. S. *vs.* San Jacinto Tin Co., 125 U. S., 273; or a patent for an invention, U. S. *vs.* Bell Telephone Co., 128 U. S., 315; and a State to protect its interest in components of the soil under its navigable waters, Coosaw Mining Co. *vs.* South Carolina, 144 U. S., 550; or to prevent abuse of charters granted by it, Attorney General *vs.* Railroad Companies, 35 Wis., 524, because of the interest in the property as proprietor or in the

646 grant as a party to it. But here the United States is not alleged, or understood, to have granted the charters of, or to have any proprietary interest in, any of these railroads; or to have any other concern about them, in any respect involved here, but to have its prohibitory statutes for regulating commerce between the States respected and obeyed, the same as that those against counterfeiting, or tampering with the mails, should be. Breaches of such statutes are misdemeanors punishable by indictment or information; and that merely such are not preventible in equity is elementary. A plaintiff in equity for relief by injunction should have some right or interest in the subject of prevention, or be
647 given express authority to proceed in that way by statute. Authority is given to the Interstate Commerce Commission to have proceedings for the enforcement of that law taken and prosecuted, but that is understood to refer to the usual and appropriate proceedings in such cases, and seem not to authorize any that are unknown there. The right given here is to prosecute, but not to provide, remedies.

If this is erroneous, only such agreements are prohibited as are for the pooling of freights, or dividing aggregate, or net proceeds of, earnings. So far as this agreement goes each road carries the freights it may get, over its own line, at its own
648 rates, however fixed, and has the proceeds, net or other, of the earnings to itself. Very able judicial opinions, and learned commentaries and disquisitions upon pooling, too numerous for separate notice herein, have been referred to, but none make it include what is left in wholly separate channels. Provision for reasonable, although equal or proportional, rates for each carrier; or for a just and proportional rate for each carrier; or for a just and proportional division of traffic among carriers, does not seem to be either a pooling of their traffic or freights; or a division of the net proceeds of their earnings, in any sense.

This statement of reasons seems quite inadequate 649
to the very full and able argument upon which this case has on each side been presented; but these conclusions have been reached upon full consideration of all, so far as understood; and, as they appear to be sufficient for the disposition of the case, no more is attempted.

Bill dismissed.

HOYT H. WHEELER.

WALLACE MACFARLANE,
U. S. Attorney, for Plaintiff.

JAMES C. CARTER,
EDWARD J. PHELPS, 650
GEORGE F. EDMUNDS, by brief,
For Defendants.

(Endorsed):—U. S. Circuit Court, South. Dist. of New York.—United States vs. Joint Traffic Association.—Opinion, WHEELER, *J.*—U. S. Circuit Court, Filed May 28, 1896.—John A. Shields, Clerk.

651

652 At a Stated Term of the Circuit Court of the United States, held in and for the Southern District of New York, at the Rooms of said Court in the Post Office Building, in the City of New York, on the 12th day of June, 1896.

Present.—Hon. HOYT H. WHEELER,
Judge.

THE UNITED STATES OF AMERICA,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

653

654

IN EQUITY.

The above entitled cause having been set down 655
by the complainants for hearing upon the bill of complaint and the answers thereto, as amended, and having come on to be heard at this Term upon the said bill of complaint and the answers thereto, as amended, and having been argued by counsel and due deliberation having been had thereon, it is

Ordered, adjudged and decreed that the said Bill of Complaint herein be and the same is hereby dismissed.

HOYT H. WHEELER.

(Endorsed):—U. S. Circuit Court, Southern District of New York.—United States vs. The Joint 656
Traffic Association and ors.—Decree and Notice of Settlement.—Wallace Macfarlane, United States Attorney, Attorney for Plaintiff.—U. S. Circuit Court, Filed June 12, 1896.—John A. Shields, Clerk.

657

658 UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Appellants,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE BALTI-
659 MORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENN-
660 SYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

Respondents.

Assignment of Errors.

And now, on the 8th day of July, 1896, come the United States of America by Wallace Macfarlane,

their Attorney for the Southern District of New 661
York, and say that the decree in the above entitled cause is erroneous and against the rights of the plaintiffs, for the following reasons:

First. In that the said Circuit Court ordered, adjudged and decreed that the bill of complaint herein be dismissed.

Second. In that it did not order, adjudge and decree that the contract between the defendants set forth in the bill of complaint was unlawful, null and void, and that the defendants and each and every of them, and their officers, agents and servants, and each and every of them, should be enjoined perpetually from continuing in the com- 662
bination or association established by the said agreement and from acting or in any way operating their roads thereunder.

Third. In that the said Circuit Court did not decide and hold that the said contract between the defendants set forth in the complaint, entitled "Articles of Organization of the Joint Traffic Association," was a contract, agreement and combination between common carriers (subject to the provisions of the Act of February 4, 1887, entitled "An Act to regulate commerce") and was in whole or in part an unlawful contract, agreement and combination between such carriers for the pooling of freights of different and competing railroads. 663

Fourth. In that the said Circuit Court did not decide and hold that the said contract between the defendants set forth in the complaint, entitled "Articles of Organization of the Joint Traffic Association," was a contract, agreement and combination between common carriers, subject to the provisions of the Act of February 4, 1887, entitled "An Act to regulate commerce," and was in whole or in part an unlawful contract, agreement and combination between such carriers to divide between them the aggregate or net proceeds of the earnings of such railroads or some portion thereof.

664 *Fifth.* In that the said Circuit Court did not decide and hold that the defendants by executing the contract set forth in the bill of complaint, to wit, the Articles of Organization of the Joint Traffic Association, had entered into an unlawful contract, agreement and combination for the pooling of freights of different and competing railroads.

Sixth. In that the said Circuit Court did not decide and hold that the defendants by executing the contract set forth in the bill of complaint, to wit, the Articles of Organization of the Joint Traffic Association, had entered into an unlawful contract, agreement and combination to divide between them the aggregate or net proceeds of the earnings of
665 such railroads or some portion thereof.

Seventh. In that the said Circuit Court did not decide and hold that Article XIII. of said contract, to wit, Articles of Organization of the Joint Traffic Association, read with other provisions of said contract constituted a contract, agreement and combination for the pooling of freights of different and competing carriers, subject to the provisions of the Act of February 4th, 1887, entitled "An Act to regulate Commerce," in violation of Section 5 of said Act.

Eighth. In that the said Circuit Court did not decide and hold that violation of Section 5 of the
666 Act of February 4, 1887, entitled "An Act to regulate Commerce," are restrainable in equity at the suit of the United States.

Ninth. In that the said Circuit Court did not decide and hold that the contract set forth in the bill of complaint, to wit, the Articles of Organization of the Joint Traffic Association, was in whole or in part an unlawful contract and combination in restraint of trade and commerce among the several States and with foreign nations.

Tenth. In that the said Circuit Court did not decide that the said contract, to wit, the Articles of

Organization of the Joint Traffic Association, was 667
in whole or in part an unlawful conspiracy in restraint of trade and commerce among the several States and with foreign nations.

Eleventh. In that the said Circuit Court did not decide that the said contract, to wit, the Articles of Organization of the Joint Traffic Association, was an attempt on the part of the parties thereto, to wit, the defendants herein, to monopolize some part of the trade and commerce among the several States and with foreign nations.

Twelfth. In that the said Circuit Court did not decide that the said contract, to wit, the Articles of Organization of the Joint Traffic Association, was 668
a combination and conspiracy on the part of the defendants, parties to said contract, to monopolize a part of the trade and commerce among the several States and with foreign nations.

Thirteenth. In that the said Circuit Court did not decide and hold that the said contract, to wit, the Articles of Organization of the Joint Traffic Association, was in whole or in part an unlawful obstruction to and interference with interstate commerce, restrainable in equity at the suit of the United States.

Fourteenth. In that the said Circuit Court did not decide and hold that the said bill of complaint was in all respects maintained and did not grant 669
the relief therein prayed for.

WALLACE MACFARLANE,
U. S. Attorney
for the Southern District of New York,
On behalf of the United States,
Appellants.

(Endorsed):—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America, Appellants, vs. The Joint Traffic Association et al., Respondents.—Assignment of Errors.—U. S. Circuit Court, Filed July 8th, 1896.—John A. Shields, Clerk.

670 CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

THE UNITED STATES OF AMERICA,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE
671 & OHIO RAILROAD COMPANY, THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENN-
672 SYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY.

Take notice, that the United States of America 673
hereby appeal to the U. S. Circuit Court of Appeals for the Second Circuit, from the decree of this Court entered in the above entitled suit on the 12th day of June, 1896, wherein and whereby it was ordered, adjudged and decreed that the bill of complaint herein be dismissed, and from each and every part of said decree.

Dated, New York, July 7th, 1896.

WALLACE MACFARLANE,
U. S. Attorney
for the Southern District of New York.

To JOHN A. SHIELDS, Esq., 674
Clerk.

(Endorsed):—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America vs. The Joint Traffic Association and others.—Notice of Appeal.—Wallace Macfarlane, United States Attorney, Attorney for United States.—U. S. Circuit Court, Filed July 22, 1896.—John A. Shields, Clerk.

675

676 UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Appellants,

against

THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE BALTIMORE
677 & OHIO RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; THE PENN-
678 SYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE WABASH RAILROAD COMPANY,

Respondents.

The United States of America, complainants in the above-entitled suit, by Wallace Macfarlane,

their Attorney for the Southern District of New 679
York, acting in this behalf under the instructions of the Attorney-General of the United States, hereby apply for the allowance of an appeal to the U. S. Circuit Court of Appeals for the Second Circuit, from the decree of the Circuit Court of the United States for the Southern District of New York, entered herein on the 12th day of June, 1896, wherein and whereby it was ordered, adjudged and decreed that the bill of complaint herein be dismissed; and pray that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said Circuit Court of Appeals.

Dated, New York, July 7th, 1896. 680

WALLACE MACFARLANE,
U. S. Attorney
for the Southern District of New York.

And now, to wit, on July 8th, 1896, it is ordered that the foregoing application be granted and the appeal allowed as prayed for.

Dated, New York, July 8th, 1896.

(Sgd.) E. H. LACOMBE,
Judge of the U. S. Circuit Court of
Appeals for the Second Circuit.

681

(Endorsed):—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America, Appellants, vs. The Joint Traffic Association and others, Respondents.—Application for and Allowance of Appeal.—Wallace Macfarlane, United States Attorney, Attorney for United States.—U. S. Circuit Court, Filed July 22, 1896.—John A. Shields, Clerk.

682 THE UNITED STATES OF AMERICA, *ss.*

To the Joint Traffic Association, the New York Central & Hudson River Railroad Company, the West Shore Railroad Company, the New York, Ontario & Western Railway Company, the Erie Railroad Company, the Allegheny Valley Railway Company, the Baltimore & Ohio Railroad Company, the Baltimore & Ohio Southwestern Railway Company, the Central Railroad Company of New Jersey, the Chesapeake & Ohio Railway Company, the Chicago & Erie Railroad Company, the Chicago & Grand Trunk Railway Company, the Cleve-
683 land, Cincinnati, Chicago & St. Louis Railway Company, the Delaware, Lackawanna & Western Railroad Company, the Detroit, Grand Haven & Milwaukee Railway Company, the Grand Rapids & Indiana Railroad Company, the Grand Trunk Railway Company of Canada, the Lake Shore & Michigan Southern Railway Company, the Lehigh Valley Railroad Company, the Michigan Central Railroad Company, the New York, Chicago & St. Louis Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, the Pennsylvania Railroad Company, the Philadelphia & Reading Railroad Company, the Philadel-
684 phia, Wilmington & Baltimore Railroad Company, the Pittsburg & Lake Erie Railroad Company, the Pittsburg & Western Railway Company, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, the Terre Haute & Indianapolis Railroad Company, the Toledo, Peoria and Western Railway Company, the Wabash Railroad Company.

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, on the 4th day of August, 1896, pursuant to

an appeal on the part of the United States, filed in 685
the Clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, Appellants, vs. The Joint Traffic Association, the New York Central & Hudson River Railroad Company, the West Shore Railroad Company, the New York, Ontario & Western Railway Company, the Erie Railroad Company, the Allegheny Valley Railway Company, the Baltimore & Ohio Railroad Company, the Baltimore & Ohio Southwestern Railway Company, the Central Railroad Company of New Jersey, the Chesapeake & Ohio Railway Company, the Chicago & Erie Railroad Company, the Chicago & Grand Trunk Rail- 686
way Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Delaware, Lackawanna & Western Railroad Company, the Detroit, Grand Haven & Milwaukee Railway Company, the Grand Rapids & Indiana Railroad Company, the Grand Trunk Railway Company of Canada, the Lake Shore & Michigan Southern Railway Company, the Lehigh Valley Railroad Company, the Michigan Central Railroad Company, the New York, Chicago & St. Louis Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, the Pennsylvania Railroad Company, the Philadelphia & Reading Railroad Company, the Philadelphia, Wilmington & Baltimore 687
Railroad Company, the Pittsburg & Lake Erie Railroad Company, the Pittsburg & Western Railway Company, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, the Terre Haute & Indianapolis Railroad Company, the Toledo, Peoria & Western Railway Company, the Wabash Railroad Company, " to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

688 Given under my hand at the City of New York, in the Southern District of New York, on the 8th day of July, 1896.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court
of Appeals for the Second Circuit.

WALLACE MACFARLANE,
U. S. Attorney,
On behalf of the United States,
Appellants.

689 (Endorsed):—U. S. Circuit Court of Appeals for the Second Circuit.—The United States of America, Appellants, vs. The Joint Traffic Association and others, Respondents.—Citation.—Wallace Macfarlane, United States Attorney, Attorney for United States.—U. S. Circuit Court, Filed July 22, 1896.—John A. Shields, Clerk.

690

UNITED STATES OF AMERICA,
Southern District of New York. } *ss.* 691

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the foregoing pages, numbered from one (1) to two hundred and forty (240) inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of The United States of America, Complainant and Appellant, against The Joint Traffic Association, the New York Central & Hudson River Railroad Company, the West Shore Railroad Company, the New York, Ontario & Western Railway 692
Company, the Erie Railroad Company, the Allegheny Valley Railway Company, the Baltimore & Ohio Railroad Company, the Baltimore & Ohio Southwestern Railway Company, the Central Railroad Company of New Jersey, the Chesapeake & Ohio Railway Company, the Chicago & Erie Railroad Company, the Chicago & Grand Trunk Railway Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Delaware, Lackawanna & Western Railroad Company, the Detroit, Grand Haven & Milwaukee Railway Company, the Grand Rapids & Indiana Railroad Company, the Grand Trunk Railway Company of Canada, the Lake Shore & Michigan Southern Railway Company, the Lehigh Valley Railroad Com- 693
pany, the Michigan Central Railroad Company, the New York, Chicago & St. Louis Railroad Company, the Northern Central Railway Company, the Pennsylvania Company, the Pennsylvania Railroad Company, the Philadelphia & Reading Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company, the Pittsburg & Lake Erie Railroad Company, the Pittsburg & Western Railway Company, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, the Terre Haute & Indianapolis Railroad Company,

694 the Toledo, Peoria & Western Railway Company, the Wabash Railroad Company, Defendants and Appellees, as the same remain of record and on file in my office.

In Testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in
[SEAL.] the Second Circuit, this second day of October, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred
695 and twenty-first.

JOHN A. SHIELDS,
Clerk.

233 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court-rooms, in the city of New York, on the 19th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorables Wm. J. Wallace, E. Henry Lacombe, circuit judges.

THE UNITED STATES OF AMERICA
vs.
THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL AND Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario and Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake and Ohio Railway Company; The Chicago and Erie Railroad Company; The Chicago and Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The Delaware, Lackawanna and Western Railroad Company; The Detroit, Grand Haven and Milwaukee Railway Company; The Grand Rapids and Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore and Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago, and St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia and Reading Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Pittsburg and Lake Erie Railroad Company; The Pittsburg and Western Railway Company; The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company; The Terre Haute and Indianapolis Railroad Company; The Toledo, Peoria and Western Railroad Company; The Wabash Railroad Company.

The appeal from the decree of the circuit court of the United States for the southern district of New York, entered herein on the 12th day of June, 1896, having come on to be heard, and due deliberation having been had thereon:

234 Now, on motion of Carter & Ledyard, attorneys for the defendants, appellees, it is—

Ordered that the decree aforesaid be, and the same hereby is, in all things affirmed; and it is further—

Ordered that a mandate issue to the circuit court of the United States for the southern district of New York directing that court to proceed in accordance herewith.

E. H. L.

Assented to as to form.

CARTER & LEDYARD,
Att'ys for Def'ts The Joint Traffic Association.
WELLS H. BLODGETT AND
CLARENCE D. ASHLEY,
Att'ys for Wabash R. R. Co.
ROBINSON, BIDDLE & WARD,
Att'ys for Pennsylvania R. R. Co. *et al.*
HAMILTON ODELL,
Att'y for D., L. & Western R. R. Co.
STETSON, TRACY, JENNINGS & RUSSELL,
Att'ys for Chesapeake & Ohio R'y Co.; Cleveland, Cincinnati, Chicago & St. Louis R'y Co.; Erie R. R. Co.; Chicago & Erie R. R. Co.
DE FOREST BROS.,
Att'ys for Central R. R. of N. J.
FRANK LOOMIS,
Sol'r for Def't The N. Y. C. & H. R. R. Co.
ALEXANDER & GREEN,
Att'ys for Lehigh Valley R'y.
ASHBEL GREEN,
Att'y for West Shore R. R. Co.; N. Y., O. & W. R'y Co.; Michigan C. R. R. Co.; N. Y., C. & St. L. R. R. Co.; Grand Trunk R'y Co. of Canada; Chicago & G. T. R'y Co., & Detroit, G. H. & M. R'y Co.

235 GEO. C. GREENE,
Att'y for L. S. & M. S. R'y Co. & P. & L. E. R. R. Co.
HUGH L. BOND,
Att'y — the Baltimore and Ohio R. R. Co.; Baltimore & Ohio Southwestern R'y Co.; Pittsburgh & Western R'y Co.
WALLACE MACFARLANE, U. S. Att'y.

(Endorsed:) U. S. circuit court of appeals for the second circuit. United States *vs.* The Joint Traffic Association, etc. Order to issue mandate. Wallace Macfarlane, United States attorney, attorney for the United States. United States circuit court of appeals, second circuit. Filed Mar. 26, 1897. James C. Reed, clerk.

236 Supreme Court of the United States. In Equity.

THE UNITED STATES OF AMERICA, Appellants,
against
THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawan-a & Western Railroad Company; The Detroit, Grand Haven & Milwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria & Western Railway Company; The Wabash Railroad Company, Respondents.

Assignment of Errors.

And now, to wit, on the 26th day of March, 1897, come the United States of America, by Wallace Macfarlane, their attorney for the southern district of New York, and say that the order of the circuit court of appeals for the second circuit in the above-entitled cause is erroneous and against the rights of the plaintiffs for the following reasons:

237 First. In that the said circuit court of appeals ordered that the decree of the circuit court of the United States for the southern district of New York, entered herein on the 12th day of June, 1896, wherein it was adjudged and decreed that the bill of complaint herein should be dismissed, should be in all things affirmed.

Second. In that the said circuit court of appeals did not order and adjudge that the said decree of the circuit court of the United States

for the southern district of New York dismissing the bill of complaint herein should be in all things reversed.

Third. In that the said circuit court of appeals did not order, adjudge, and decree that the contract set forth in the bill of complaint herein, to wit, the "articles of organization of the Joint Traffic Association," was unlawful, null, and void, and that the defendants and each and every of them and their officers, agents, and servants and each and every of them should be enjoined perpetually from continuing in the combination or association established by the said agreement and from acting or in any way operating their roads thereunder.

Fourth. In that the said circuit court of appeals did not decide and hold that the contract set forth in the bill of complaint, to wit, the "articles of organization of the Joint Traffic Association," was an unlawful contract and combination in restraint of trade and commerce among the several States and with foreign nations.

238 Fifth. In that the said circuit court of appeals did not decide and hold that the said contract was an unlawful conspiracy in restraint of trade and commerce among the several States and with foreign nations.

Sixth. In that the said circuit court of appeals did not decide and hold that the said contract was an attempt on the part of the parties thereto, to wit, the defendants herein, to monopolize a part of the trade and commerce among the several States and with foreign nations.

Seventh. In that the said circuit court of appeals did not decide and hold that the said contract was a combination and conspiracy on the part of the defendants, parties to said contract, to monopolize a part of the trade and commerce among the several States and with foreign nations.

Eighth. In that the said circuit court of appeals did not decide and hold that the said contract, to wit, the "articles of organization of the Joint Traffic Association," was a contract, agreement, and combination between common carriers (subject to the provisions of the act of February 4, 1887, entitled "An act to regulate commerce") for the pooling of freights of different and competing railroads.

Ninth. In that the said circuit court of appeals did not decide and hold that the said contract, to wit, the "articles of organization of the Joint Traffic Association," was a contract, agreement, and combination between common carriers (subject to the provisions of the act of February 4, 1887, entitled "An act to regulate com-

239 merce") to divide between them the aggregate or net proceeds of the earnings of such railroads or some portion thereof.

Tenth. In that the said circuit court of appeals did not decide and hold that the defendants, by executing the contract set forth in the bill of complaint, to wit, the "articles of organization of the

Joint Traffic Association," had unlawfully entered into an unlawful contract, agreement, and combination for the pooling of freights of different and competing railroads.

Eleventh. In that the said circuit court of appeals did not decide and hold that the defendants, by executing the contract set forth in the bill of complaint, to wit, the "articles of organization of the Joint Traffic Association," had unlawfully entered into an unlawful contract, agreement, and combination to divide between them the aggregate or net proceeds of the earnings of such railroads or some portion thereof.

Twelfth. In that the said circuit court of appeals did not decide and hold that the contract set forth in the bill of complaint, to wit, the "articles of organization of the Joint Traffic Association," was a violation of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that it was restrainable in equity at the suit of the United States, pursuant to the provisions of said act of July 2, 1890.

Thirteenth. In that the said circuit court of appeals did
240 not decide and hold that the contract set forth in the bill of complaint, to wit, the "articles of organization of the Joint Traffic Association," was a violation of section 5 of the act of February 4, 1887, entitled "An act to regulate commerce," and that being a violation of the section and act aforesaid was restrainable in equity at the suit of the United States.

Fourteenth. In that the said circuit court of appeals did not decide and hold that the said contract, to wit, the "articles of organization of the Joint Traffic Association," was an unlawful obstruction to and interference with the interstate commerce and restrainable in equity at the suit of the United States.

WALLACE MACFARLANE,
U. S. Attorney for the Southern District of New York.

(Endorsed:) U. S. Supreme Court. United States *versus* The Joint Traffic Association & others. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for plaintiff. U. S. circuit court. Filed Mar. 26, 1897. John A. Shields, clerk.

241 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, Appellants,
against
THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Detroit, Grand Haven & Milwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria & Western Railway Company; The Wabash Railroad Company, Respondents.

Notice of Appeal.

Take notice that the United States of America hereby appeal to the Supreme Court of the United States from the final order, judgment, and decree of the United States circuit court of appeals for the second circuit, entered in the above-entitled suit on the 26th day of March, 1897, wherein and whereby it was ordered,
242 adjudged, and decreed that the decree of the circuit court of the United States for the southern district of New York dismissing the bill of complaint herein be affirmed, and from each and every part of said decree.

Dated New York, March 26th, 1897.

WALLACE MACFARLANE,
United States Attorney for the Southern District of New York.

To James C. Reed, clerk.

243 [Endorsed:] U. S. circuit court of appeals for the second circuit. The United States *vs.* The Joint Traffic Association & o'rs. Notice of appeal. Wallace Macfarlane, United States attorney, attorney for United States. United States circuit court of appeals, second circuit. Filed Mar. 27, 1897. James C. Reed, clerk.

Services of a copy of the within notice of appeal is hereby admitted.

Dated New York, March 26th, 1897.

HAMILTON ODELL,
Att'y for Delaware, Lackawanna & Western R. R. Co.

GEO. C. GREENE,
Att'y for Lake Shore & Michigan Southern R. R. Co. & Pittsburgh & Lake Erie R. R. Co.

ALEXANDER & GREEN,
Att'ys for Lehigh Valley R. R. Co.

ROBINSON, BIDDLE & WARD,
Att'ys for Pennsylvania R. R. Co.; Allegheny Valley R'y Co.; Northern Central R'y Co.; Pennsylvania Co.; Philadelphia, Wilmington & Baltimore R. R. Co.; Pittsburgh, Cincinnati, Chicago & St. Louis R'y Co.; Terre Haute & Indianapolis R. R. Co.; Toledo, Peoria & Western R'y Co.; Grand Rapids & Indiana R. R. Co.

DE FOREST BROTHERS,
Att'ys for Central R. R. Co. of New Jersey.

WELLS H. BLODGETT,
CLARENCE D. ASHLEY,
Att'ys for Wabash R. R. Co.

F. LOOMIS,
Sol'r for New York Central & Hudson River R. R. Co.

CARTER & LEDYARD,
Att'ys for the Joint Traffic Association.

STETSON, TRACY, JENNINGS & RUSSELL,
Att'ys for Chesapeake & Ohio R'y Co.; Cleveland, Cincinnati, Chicago & St. Louis R'y Co.; Erie R. R. Co.; Chicago & Erie R. R. Co.

ASBEL GREEN,
Att'y for West Shore R. R. Co.; New York, Ontario & Western R. R. Co.; Michigan Central R. R. Co.; New York, Chicago & St. Louis R. R. Co.; Grand Trunk R'y Co. of Canada; Chicago & Grand Trunk R'y Co.; Detroit, Grand Haven & Milwaukee R'y Co.

E. J. D. CROSS &
HUGH L. BOND, JR.,
Att'ys for Baltimore & Ohio R. R. Co.; Baltimore & Ohio Southwestern R'y Co.; Pittsburgh & Western R'y Co.

244 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, Appellants,
against
THE JOINT TRAFFIC ASSOCIATION; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Detroit, Grand Haven & Milwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria & Western Railway Company; The Wabash Railroad Company, Respondents.

Application for and Allowance of an Appeal.

The United States of America, the complainants in the above-entitled suit, by Wallace Macfarlane, their attorney for the southern district of New York, acting in this behalf under the instructions of the Attorney General of the United States, hereby apply for the allowance of an appeal to the Supreme Court of the United States from the final order, judgment, and decree of the United
245 States circuit court of appeals for the second circuit, entered herein on the 26th day of March, 1897, wherein and whereby it was ordered, adjudged, and decreed that the decree of the United States circuit court for the southern district of New York dismissing the bill of complaint herein be affirmed, and pray that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated New York, March 26th, 1897.

WALLACE MACFARLANE,
United States Attorney for the Southern District of New York.

And now, to wit, on the 26th day of March, 1897, it is ordered that the foregoing application be granted and the appeal allowed as prayed for.

Dated New York, March 26th, 1897.

E. HENRY LACOMBE,
Judge of the United States Circuit Court and of the United States Circuit Court of Appeals for the Second Circuit.

246 [Endorsed:] "A." Suit No. —. U. S. circuit court of appeals for the second circuit. The United States *vs.* The Joint Traffic Association & o'rs. Application for and allowance of an appeal. Wallace Macfarlane, United States attorney, attorney for United States. United States circuit court of appeals, second circuit. Filed Mar. 27, 1897. James C. Reed, clerk.

Services of a copy of the within application for and allowance of an appeal admitted.

Dated New York, March 26th, 1897.

HAMILTON ODELL,
Att'y for Delaware, Lackawanna & Western R. R. Co.
GEO. C. GREENE,
Att'y for Lake Shore & Michigan Southern R. R. Co. & Pittsburgh & Lake Erie R. R. Co.
ALEXANDER & GREEN,
Att'ys for Lehigh Valley R. R. Co.
ROBINSON, BIDDLE & WARD,
Att'ys for Pennsylvania R. R. Co.; Allegheny Valley R'y Co.; Northern Central R'y Co.; Pennsylvania Co.; Philadelphia, Wilmington & Baltimore R. R. Co.; Pittsburgh, Cincinnati, Chicago & St. Louis R'y Co.; Terre Haute & Indianapolis R. R. Co.; Toledo, Peoria & Western R'y Co.; Grand Rapids & Indiana R. R. Co.
DE FOREST BROS.,
Att'ys for Central R. R. Co. of New Jersey.
WELLS H. BLODGETT AND
CLARENCE D. ASHLY,
Att'ys for Wabash R. R. Co.
F. LOOMIS,
Sol'r for New York Central & Hudson River R. R. Co.
CARTER & LEDYARD,
Att'ys for The Joint Traffic Association.
STETSON, TRACY, JENNINGS & RUSSELL,
Att'ys for Chesapeake & Ohio R'y Co.; Cleveland, Cincinnati, Chicago & St. Louis R'y Co.; Erie R. R. Co.; Chicago & Erie R. R. Co.

ASHBEL GREEN,
Att'y for West Shore R. R. Co.; New York, Ontario & Western R. R. Co.; Michigan Central R. R. Co.; New York, Chicago & St. Louis R. R. Co.; Grand Trunk R'y Co. of Canada; Chicago & Grand Trunk R'y Co.; Detroit, Grand Haven & Milwaukee R'y Co.
E. J. D. CROSS &
HUGH L. BOND, JR.,
Att'ys for Baltimore & Ohio R. R. Co.; Baltimore & Ohio Southwestern R'y Co.; Pittsburgh & Western R'y Co.

247 THE UNITED STATES OF AMERICA, *ss:*

To The Joint Traffic Association; The New York Central & Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Detroit, Grand Haven & Milwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria and Western Railway Company; The Wabash Railroad Company:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the 16th day of April, 1897, pursuant to an appeal on the part of the United States,
248 filed in the clerk's office of the United States circuit court of appeals for the second circuit, in a certain suit or proceeding entitled "The United States of America, appellants, *vs.* The Joint Traffic Association; The New York Central & Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad

Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Detroit, Grand Haven & Wilwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria & Western Railway Company; The Wabash Railroad Company," to show cause, if any there be, why the decision of the said United States circuit court of appeals, in the said appeal mentioned, should not be reversed, modified, or corrected and speedy justice should not be done in that behalf.

249 Given under my hand, at the city of New York, in the southern district of New York, on the 26th day of March, 1897.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court and of the U. S. Circuit Court of Appeals for the Second Circuit.

WALLACE MACFARLANE,
U. S. Attorney, on Behalf of The United States of America, Appellants.

250 [Endorsed:] Suit No. —. U. S. circuit court of appeals for the second circuit. United States *vs.* The Joint Traffic Association and others. Citation. Wallace Macfarlane, United States attorney, attorney for United States. United States circuit court of appeals, second circuit. Filed Mar. 27, 1897. James C. Reed, clerk.

Service of a copy of the within citation is hereby admitted.

Dated New York, March 26, 1897.

HAMILTON ODELL,
Att'y for Delaware, Lackawanna & Western R. R. Co.
GEO. C. GREENE,
Att'y for Lake Shore & Michigan Southern R. R. Co. & Pittsburgh & Lake Erie R. R. Co.
ALEXANDER & GREEN,
Att'ys for Lehigh Valley R. R. Co.
ROBINSON, BIDDLE & WARD,
Att'ys for Pennsylvania R. R. Co.; Allegheny Valley R'y Co.; Northern Central R'y Co.; Pennsylvania Co.; Philadelphia, Wilmington & Baltimore R. R. Co.; Pittsburgh, Cincinnati, Chicago & St. Louis R'y Co.; Terre Haute & Indianapolis R. R. Co.; Toledo, Peoria & Western R'y Co.; Grand Rapids & Indiana R. R. Co.
DE FOREST BROTHERS,
Att'ys for Central R. R. Co. of New Jersey.
WELLS H. BLODGETT AND
CLARENCE D. ASHLEY,
Att'ys for Wabash R. R. Co.
F. LOOMIS,
Sol'r for New York Central & Hudson River R. R. Co.
CARTER & LEDYARD,
Att'ys for the Joint Traffic Association.
STETSON, TRACY, JENNINGS & RUSSELL,
Att'ys for Chesapeake & Ohio R'y Co.; Cleveland, Cincinnati, Chicago & St. Louis R'y Co.; Erie R. R. Co.; Chicago & Erie R. R. Co.
ASHBEL GREEN,
Att'y for West Shore R. R. Co.; New York, Ontario & Western R. R. Co.; Michigan Central R. R. Co.; New York, Chicago & St. Louis R. R. Co.; Grand Trunk R'y Co. of Canada; Chicago & Grand Trunk R'y Co.; Detroit, Grand Haven & Milwaukee R'y Co.
E. J. D. CROSS &
HUGH L. BOND, JR.,
Att'ys for Baltimore & Ohio R. R. Co.; Baltimore & Ohio Southwestern R'y Co.; Pittsburgh & Western R'y Co.

251 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 250, inclusive, contain a true and com-

plete transcript of the record and proceedings had in said court in the case of The United States of America, complainant, against The Joint Traffic Association; The New York Central & Hudson River Railroad Company; The West Shore Railroad Company; The New York, Ontario & Western Railway Company; The Erie Railroad Company; The Allegheny Valley Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railway Company; The Central Railroad Company of New Jersey; The Chesapeake & Ohio Railway Company; The Chicago & Erie Railroad Company; The Chicago & Grand Trunk Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Detroit, Grand Haven & Milwaukee Railway Company; The Grand Rapids & Indiana Railroad Company; The Grand Trunk Railway Company of Canada; The Lake Shore & Michigan Southern Railway Company; The Lehigh Valley Railroad Company; The Michigan Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The Northern Central Railway Company; The Pennsylvania Company; The Pennsylvania Railroad Company; The Philadelphia & Read-
252 ing Railroad Company; The Philadelphia, Wilmington & Baltimore Railroad Company; The Pittsburg & Lake Erie Railroad Company; The Pittsburg & Western Railway Company; The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; The Terre Haute & Indianapolis Railroad Company; The Toledo, Peoria & Western Railway Company; The Wabash Railroad Company, defendants, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the said United States the one hundred and twenty-first.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED, *Clerk.*

Endorsed on cover: Case No. 16,544. U. S. C. C. of appeals, second circuit. Term No., 765. The United States, appellant, *vs.* The Joint Traffic Association *et al.* Filed March 30, 1897.